

RULES, ORDERS,

AND

RESOLUTIONS

OF THE

Court of King's Bench.

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AND
RESOLUTIONS

OF THE
COURT OF KING'S BENCH

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WITH

NOTES AND REFERENCES,

EXPLANATORY OF THE PRACTICE OF THAT COURT.

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L O N D O N:

PRINTED BY A. STRAHAN AND W. WOODFALL,
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FOR J. BUTTERWORTH, FLEET STREET.

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RULES, ORDERS,

RESOLUTIONS

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P R E F A C E.

NO publication of the General Rules and Orders, which govern the Practice of the Court of King's Bench, having appeared since that of *Sir George Cooke* in the year 1747, and many (especially such as govern the present Practice) having been since made, has induced the Editor to offer to the Public a correct List of the General Rules, Orders, and Resolutions of the Court in matters of Practice, from the reign of *James* the First to the present time; together with Notes subjoined, explanatory of the Practice which has arisen thereupon; as also other Notes, which may occasionally prove useful. Although many of the Rules are now
become

become obsolete, and others having suggested improvements of the Law, have induced the Legislature to interfere, and with additions convert them into Statute Law, of which, amongst others, may be instanced the Rules respecting the Regulation of Attornies, and the 17th Section of the Rule of 1654, respecting Demurrers; yet the Editor has not thought it proper to omit those Rules, in which he not only feels himself justified by the maxim of the Law, that *surplusagium non nocet*, but also because the causes and motives, which are the fountains from whence the Law arises, are frequently beneficially known and used in expounding the intention of the Legislature, and the consequent operation of the Law. The Reader will observe, by the many cases cited, that these Rules and Orders, (which may be denominated the Statute Law of Practice,) like all written Law, must

must be construed not with an harsh adherence to the letter of the Rule, *nimum harente juris apicibus*, but with an eye looking to the object which induced the Court to make the Rule. That there may be some errors in the Notes, perhaps, must be admitted; but it is hoped the Reader will not find any but venial faults. The Rules, which were originally published in the *Latin* Tongue, are added by way of Appendix, without any alteration whatever, either as to the Pointing or Abbreviations. In respect to the Translation of such Rules, the Editor has taken the freedom of correcting a few of the most obvious grammatical errors; but such as have been originally issued by the Court in the *English* Tongue, the Editor has not thought himself at liberty to alter.

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E R R A T A.

- Page 38, line 23, for c Geo. 2. c. 25, read c. 23.
115, — for Rule I. read Rule II.
123, — 4, after other add in.
133, — 11, for discharged read confirmed.
165, — 19, for potestatum read potestatem.
208, — 24, for though read the.
300, — 4, for Ball read Bill.
301, — 14, after under dele the.

Pointing out the errors in the
to the translation of each Rule, the
Editor has taken the freedom of cor-
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RULES AND ORDERS

OF THE

COURT OF KING'S BENCH,

TEMPORE JACOBI PRIMI.

TRINITY TERM, 2 Jac. I. 1604.

RULE I.

[Attornies not to deliver or receive Pleadings, which ought to be filed with the Clerk of the Papers.]

IT IS ORDERED by the Court in full court, That no Attorney or Clerk attending here in court do deliver to any Attorney or Clerk attending here in court, or to any other person, or do accept from any Attorney or Clerk attending here in court, or from any other person, any Plea which ought to be filed in the Office of the Clerk of the Papers, or any Copy of such Plea, before the same be filed in the Office of the Clerk of the Papers; and that

B

such

2 RULES AND ORDERS OF THE

such Copy after such Plea filed be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers, and signed with the hand of a Clerk attending there; under the penalty, that every Attorney or Clerk attending here in court do forfeit, for his first offence so committed, 10s. to be paid to the box for the use of the poor; for the second offence so committed, 20s. in like manner to be paid to the box for the use of the poor; and that every such Attorney or Clerk, for the third offence so committed, be expelled the court*.

* Vide RULES, Trin. 16 Car. II. Easter, 18 Car. II. Mich. 2 Wil. and M.

The same Term, 1604.

RULE II.

[Attornies to get *Posseas* marked by the Clerk of the *Posseas* two days after receiving them.]

IT IS ORDERED by the Court in full court, That every Attorney and Clerk attending here in court, who shall receive any *Posseas* from any Clerk of Assize, or other

other Officer appointed to return *Posseas*, do get every such *Possea* so returned marked with the hand of the Clerk appointed to receive *Posseas* here in court, within two days after such *Possea* shall come to the hands of such Attorney or Clerk attending here in court, under the penalty, that every such Attorney or Clerk do forfeit, for his first default in this Behalf, 10s. to be paid to the box for the use of the poor; for his second default in this behalf, 20s. in like manner to be paid to the box for the use of the poor; and for the third default, that every such Attorney or Clerk be expelled the court*.

• Vide RULE, Hilary, 1657.

HILARY TERM, 3 Jac. I. 1605.

[If the Court make a Rule in presence of Counsel for both parties, it shall not be again moved contrary to such Rule.]

IT IS ORDERED, That if any Cause be once moved in court in presence of Counsel for both parties, and the Court there-

4 RULES AND ORDERS OF THE

thereupon order between them, if the same Cause be again moved, against the Rule so given by the Court, an Attachment issue against him who shall procure such motion to be made contrary to the Rule of Court so first made, and that the Counsel who shall so move (having notice of the former Rule) shall not be heard here in court in any Cause in that Term in which such motion shall be made contrary to the said former Rule.

HILARY TERM, 5 Jac. I. 1607.

[Fees payable to the Secondary on bringing money into court.]

IT IS ORDERED by the Court in full court, That every party at whose request any sum of money shall be brought into court here to be kept, do pay to the Secondary of the Chief Clerk of our Lord the King here for the time being, for the keeping thereof, 20s. for every 100l. and so according to that rate for every greater or less sum, as well for a sum of money to be

be brought in, in form aforesaid, as for every sum of money now remaining in court; and for a sum of money under 10*l.* the sum of 2*s.* be paid, as used to be paid formerly*.

* It had become the practice, that when a Defendant paid money into court upon the common Rule, giving him leave so to do, for his Attorney to get the Master's appointment to tax the costs, which having served upon the plaintiff's Attorney, and afterwards ascertained the costs by taxation, to tender the amount; but this practice appearing highly inconvenient and absurd, (it not being in the defendant's power to know whether the money paid into court would be accepted by the plaintiff in full of the demand for which his action was brought, and, if he claimed more, these steps were wholly useless,) the Court have now determined that, if the plaintiff accept the money paid into court, his Attorney shall get the Master's appointment to tax upon an Office Copy of the Rule, and serve the defendant's Attorney therewith. *Kebel v. Hudson*, 4 T. Rep. B. R. 10.

As to the Fees due to the Secondary on bringing money into court, they are equally governed by this Rule, whether the money be brought in as a profert upon a Plea of Tender, or under the common Rule for bringing money into court.

6 RULES AND ORDERS OF THE

EASTER TERM, 6 Jac. I. 1608.

[Sheriffs to make return of Writs before the end,
or immediately after every Term.]

IT IS ORDERED by the Court, That every Sheriff, before the end of, or immediately after, every Term, do deliver and return into court all Writs of *Latitat*, and writs thereupon issuing out of this court, to them and every of them directed and delivered; and that, upon such return and delivery, every such Sheriff do make oath here in court, that the Writs so by him delivered and returned, were all the Writs directed and delivered to him, and which came to his hands; and that if any Sheriff make default in this behalf, he attend the court here, and wait the judgment of the Court for his contempt in this behalf committed*.

* Vide RULES, Trin. 30 G. III. Mich. 32 G. III.

MICHAELMAS TERM, 7 *Jac.* I. 1609.

[The defendant's Attorney to give notice to the plaintiff's Attorney, of the Bail intended to be put in, before the Recognizance be acknowledged.]

IT IS ORDERED by the Court, That no Attorney put in any Bail for any defendant whatsoever, before such Attorney give notice to the plaintiff's Attorney in the cause wherein such defendant shall be delivered to Bail, upon pain of expulsion from his office*.

* This Rule is now wholly obsolete, notice of Bail being at this day never given until after the Bail are acknowledged; the reason appears to be, that the Bail were in those days absolute and unexceptionable after acknowledgment.

TRINITY TERM, 9 *Jac.* I. 1611.

[That no *Audita Querela* be allowed, or Bail taken thereon, but in open court on motion.]

IT IS ORDERED, That no Writ of *Audita Querela* for any cause whatsoever be allowed, or Bail thereupon be taken, unless

8 RULES AND ORDERS OF THE

here in public and open court, and by special motion first made, and a Rule thereupon entered.

EASTER TERM, 13 Jac. I. 1615.

[No Attorney of this court to pay a greater sum on entering his Record for trial at the Assizes, than Attornies of the Common Pleas.]

“ **B**ECAUSE the Court of the Lord the
“ King, before the King himself, is in-
“ formed by motion in full court, upon the
“ grievous complaint of the Attornies of this
“ court, that whereas those Attornies are At-
“ tornies of Record in the court here, in the
“ records named, and so have been of old,
“ and attending before the Justices of Assize
“ taken in divers circuits, to put in records,
“ and to appear for clients at the Assizes, in
“ such records in which they were named At-
“ tornies, before those Justices at the Assizes,
“ and are Attornies in the same records of
“ *Nisi Prius*, and prepared to inform the
“ Counsel, of their clients and masters in that
“ behalf there, that the said Attornies of this
“ Court had been compelled by the Mar-
“ shals

“ shals of divers Justices of Assize to pay to
“ the said Marshals for putting the said re-
“ cords of *Nisi Prius* for the plaintiffs, and
“ appearing for the defendants in such re-
“ cords in which they are and are named
“ Attornies, divers undue, greater, and more
“ grievous fees and sums of money than the
“ Attornies of the Court of Common Pleas
“ have paid, and been used to pay in such
“ cases; and that the said Attornies of this
“ court are not allowed their fees for their
“ attendances at the Assizes aforesaid, in de-
“ rogation of the dignity of this court, and to
“ the great damage of the said Attornies of
“ this court, and their clients.

“ And because it sufficiently appears to
“ the Court of the Lord the King here, that
“ there were Attornies of this court of old,
“ and that Warrants of Attorney have been
“ received in every Term for them, and that
“ equal justice may be done them in this
“ behalf;” IT IS ORDERED by the Court of
the said Lord the King here, That here-
after no Attorney of this court, for the
putting in any record of *Nisi Prius*, before
any Justice of Assize, wherein he shall be
named Attorney in the record, and shall be
attending at the Assizes about the trial of
such

10 RULES AND ORDERS OF THE

such record, shall pay, or be compelled to pay, more, or a greater sum of money, than the Attornies of the Court of Common Pleas at *Westminster* in such cases pay, and have been accustomed to pay; and that the fees of the Attornies of this Court shall be allowed them at the Affizes aforesaid.

EASTER TERM, 17 Jac. I. 1619.

[All Judgments for sums amounting to 20*l*. to be regularly docketed.]

IT IS ORDERED by the Court here in full court, That where any Judgment in any cause whatsoever here in the Court of the Lord the King before the King himself, hereafter given, wherein the debt and damages amount to 20*l*. or more, that every Attorney in such case shall make or cause to be made a note on parchment or paper, containing the names and surnames of the parties, plaintiffs and defendants, and the debt and damages recovered, together with the Term and Roll where such Judgment

ment shall be entered, in the following form, *viz.*

A. B. at the suit of *C. D.* debt 20*l.*

East. Term, 17 *Jac.* I. Roll 302.

A. J. at the suit of *N. S.* damages 23*l.* 13*s.* 4*d.*

Hil. Term, 15 *Jac.* I. Roll 100.

And shall deliver such note so made to *L. C.* one of the Clerks, &c. and to every other Clerk who for the future shall execute his place, to be registered by him in a book to be provided for that purpose*.

* By Statute 4 and 5 W. & M. c. 20, all Judgments of the Courts at *Westminster* are directed to be docketed alphabetically; and by § 3, "No Judgment
"not docketed and entered in the book shall affect any
"lands or tenements as to purchasers or mortgagees, or
"have any preference against heirs, executors, or administrators, in the administration of their ancestors,
"testators, or intestates estates." And by Statute 29 Car. II. c. 3, Officers signing Judgments shall enter the day of signing the same, and such Judgments shall not bind the lands in the hands of a *bonâ fide* purchaser, but only from the time of actually signing the same; nor the goods in the hands of a stranger or purchaser, but only from the actual delivery of the Writ of Execution to the Sheriff.

Before the making of these Statutes, the Judgment having relation back to the first day of the Term of which, or as of which it was given, became a charge upon

15 RULES AND ORDERS OF THE

upon a moiety of the real and the whole of the personal property of which the defendant was seised or possessed at that time.

HILARY TERM, 19 *Jac.*, I. 1621.

[Judicial Writs of this Court, shall be executed by Sheriffs of *Welch* Counties.]

“ **W**HEREAS a question hath been made,
“ whether all judicial writs issuing
“ upon Judgments given in the Court of our
“ Lord the King before the King himself,
“ for execution, should run and might be
“ executed within the several Counties of
“ *Wales*; and thereupon the aforesaid Court
“ of the Lord the King before the King him-
“ self, being now moved by Sir *Robert Heath*,
“ Knt. Solicitor of the Lord the King, be-
“ cause it manifestly appears to the said Court
“ of the said Lord the King, upon mature de-
“ liberation and consideration of divers pre-
“ cedents in this case heretofore made, that
“ the usual and constant course of the Court
“ aforesaid hitherto hath been and is, that
“ all such Writs may and ought to be lawfully
“ executed within *Wales*,” IT IS ORDERED,
That

That all such judicial Writs may and ought to be made and directed to the Sheriffs of the said several Counties of *Wales*, and ought to be executed by those Sheriffs for the time being, at their peril, as in all counties of *England**.

* It has been determined, that the Courts at *Westminster* may issue as well mesne process as judicial writs, directed to the Sheriff of any *Welsh* county. *Penry against Jones*, Dougl. 212, and the cases there cited.

RULES AND ORDERS

OF THE

COURT OF KING'S BENCH,

TEMPORE CAROLI PRIMI.

HILARY TERM, 8 Car. I. 1632.

[No Attorney, &c. to deliver or receive any Declaration by original varying from the Writ, or deliver or receive more than one Declaration on any one Writ.]

IT IS ORDERED, That no Philazer, Clerk, or Attorney of the court, upon the appearance of any defendant upon any original Writ, do prosecute, make, enter, or deliver any Declaration varying in matter from the original Writ first prosecuted, nor shall receive any such Declaration so varying, upon his appearance upon such original Writ, without a special Rule in open court first obtained; nor shall prosecute,

fecute, make, enter, or deliver to any other Philazer, Clerk, or Attorney of the court, appearing upon any original Writ, nor shall receive from any Philazer, Clerk, or Attorney, more Declarations than one, upon penalty of expulsion, and forfeiting the office of every Philazer so offending, and expulsion from the court of every other Clerk or Attorney so offending.

EASTER TERM, 9 *Car.* 1. 1633.

[For amending the Records returned upon Writs of Error directed to the Judges of the Court of the Marshal of the Household.]

IT IS ORDERED, That the several Records of Judgments returned here into court upon Writs of Error, and which are not entered of record, shall be amended in the style of the court, and shall be made,
 “ The Court of the King’s Palace of *West-*
 “ *minster*, held at *Southwark* in the county
 “ of *Surry*, within the jurisdiction of that
 “ court, on *Friday* the day of
 “ , in the year
 “ of the reign of our Lord *Charles*, by the
 8 “ grace

16. RULES AND ORDERS OF THE

" grace of God, King of *England, Scotland,*
 " *France, and Ireland*, Defender of the Faith,
 " &c. before *Thomas Edmonds*, Knt. Trea-
 " surer of the Household of our Lord the
 " King; *Edmund Verney*, Kt. Marshal of
 " the aforesaid household; and *Edward*
 " *Herbert*, Esq. Steward of the court afore-
 " said, Justices of the said court, by virtue
 " of the Letters Patent of the said Lord
 " the now King, dated at *Canbury* the
 " *12th* day of *July*, in the sixth year of his
 " reign *."

* This being a temporary Rule, made in conse-
 quence of a then recent patent for erecting the Palace
 Court, is now obsolete; but, as it contains the
 style of the Court, and date of the patent, and as the
 Court of the Marshal of the household is subordinate
 and subject to the Court of King's Bench, as being
 the Court of the King's Marshalsea, this Rule may oc-
 casionally be useful.

upon Writs of Error, and which are not
 entered of record, shall be amended in the
 style of the court, and shall be made
 " The Court of the King's Bench of West-
 " minster, held at Southwark in the county
 " of Surrey, within the jurisdiction of that
 " court, on Friday the 1st day of
 " the 11th year, in the 11th year
 " of the reign of our Lord Charles, by the
 " grace "

EASTER TERM, 11 *Car.* I. 1635.

[No *Certiorari* upon a Writ of Error to be sued out after a *Certiorari* already returned without motion.]

IT IS ORDERED, That no Writ of *Certiorari* upon any Writ of Error be sued out or made by any Clerk or Attorney of the court, after a Writ of *Certiorari* in the same cause hath been already sued out and returned, without motion in court by Counsel.

HILARY TERM, 14 *Car.* I. 1638.

[Prisoners removed from the Fleet to the King's Bench to remain in custody there till the fees of the Fleet be paid.]

IT IS ORDERED, That every Prisoner who shall be removed from the custody of the Warden of the Fleet to the prison of the Marshalsea of this court, by virtue of a Writ of *Habeas Corpus*, shall remain in the prison of the Marshalsea aforesaid, and shall

18 RULES AND ORDERS OF THE

shall not be set at liberty until he have paid the prison fees due to the aforesaid Warden of the Fleet*.

• It is the duty of every person to whom a Writ of *Habeas Corpus* be directed, to pay obedience thereto; and the Court will grant an attachment on default. *The King v. Wilson*, 5 T. Rep. B. R. 89; but if a defendant bring a *Habeas Corpus* to remove himself from any prison to the King's Bench, the Judge will not commit him, until he pay the Gaoler his fees.

MICHAELMAS TERM, 15 Car. I. 1639.

[Filacers to attend the Court.]

IT IS ORDERED by the Court, That all and singular the Filacers of this court do appear in person on the second return of next Term, to attend their office, and shew cause of their non-attendance, otherwise the office of those making default shall be seized.

MICHAELMAS TERM, 17 Car. I. 1641.

[How Copies of Pleadings are to be delivered to the
Judges before argument.]

IT IS ORDERED, That all Matters of Law,
Special Verdicts, and Writs of Error
upon Matters in Law or Special Verdicts,
and in all other causes depending in court,
entered or to be entered in the Book of
the Clerk of the Papers, where Books ought
to be delivered to the Judges, that accord-
ing to the ancient course of the court,
immediately after the reading of the Re-
cord, Books ought to be delivered to the
Chief Justice and Senior Justice by the
Plaintiff or his Attorney, and to the other
Justices by the Defendant or his Attorney;
and if one Party or his Attorney do ne-
glect to deliver the Books in form afore-
said, then the other Party, or his Attorney,
shall deliver such Books so omitted to be
delivered, at the cost of the Party who
shall so neglect, before any argument in

20 RULES AND ORDERS OF THE

that cause shall be made at Bar by Counsel*.

* Vide RULES, Easter, 33 Car. II. Easter, 2 Jac. II. and Easter, 18 Car. II.

TRINITY TERM, 20 *Car. I.* 1644.

[If the Clerk of the Errors neglect his duty, the Clerk of the Treasury may do his office.]

IT IS ORDERED by the Court, That if the Clerk of the Errors appointed by the Chief Justice of this court, do not receive Writs of Error, and do those things which appertain thereunto, as hath been accustomed, then the Clerk of the Treasury of this court shall do in that behalf what the Clerk of the Treasury in times past, or the aforesaid Clerk of the Errors hath used to do in that behalf, according to law, and the course of this court.

TRINITY TERM, 21 *Car.* I. 1645.

[The Sheriff of *Chester* to return Writs directed to him.]

IT IS ORDERED, That the Sheriff of the county of *Chester* shall return all Writs issuing out of this court to him directed, according to the return of those Writs, under the penalty of 50*l.*

MICHAELMAS TERM, 21 *Car.* I. 1645.

[The Plaintiff's Attorney, on receiving notice of putting in Bail, to attend,]

IT IS ORDERED, That the Attorney for the Plaintiff, in every action in this court, in which good Bail be by law required, at the time of offering such Bail, shall, upon notice to him given, attend before any Justice of this court, to accept of or take exception to the Bail so offered,

22 RULES AND ORDERS OF THE

offered, under the penalty of being struck off the Roll*.

* Since the practice of putting in *Bail de bene esse* has been introduced, this Rule is grown obsolete; but (with perhaps a slight alteration) might be made useful, *viz.* Where a defendant, on account of the absence of friends to bail him, or if he be involuntarily surrendered by his Bail, upon the eve of or during a vacation, after which his friends come forward, and are willing to become Bail; but the Term being now elapsed, no regular justification of Bail can be had, nor can the Sheriff (the Writ being returnable), or the Marshal, in any case take a Bail Bond; the Defendant must therefore (unless the Plaintiff's Attorney consent to take a private justification before a Judge at chambers,) remain a prisoner until the ensuing Term, and a justification of Bail shall be had in open court.

HILARY TERM, 21 Car. I. 1645.

[Attornies and Sheriffs to attend the court personally.]

IT IS ORDERED, That all Attornies of this court not attending personally here in court, in three weeks of *Easter* next, be

be put off the Roll; and that all Sheriffs of the kingdom of *England*, or their Deputies, attend the court here in fifteen days of *Easter* next, and so from day to day, during the whole Term, and so in every Term, to make return of all Writs and Process to them respectively directed from the court here, under the penalty of every of them of 40*l*. *

* Vide Rule, 14 Car. II.

EASTER TERM, 23 Car. I. 1647.

[Under-Sheriffs to attend the Court.]

IT IS ORDERED, That the Under-Sheriffs of every county and city attend the court of our Lord the King, before the King himself, on the second return of every Term, under the penalty of 40*l*.

24 RULES AND ORDERS OF THE

HILARY TERM, 23 Car. I. 1647.

[Attornies, putting in special Bail, immediately to file the Bail Piece.]

IT IS ORDERED, That all Clerks, Filacers, and Attornies of this court, who shall put in special Bail for Defendants, shall file all such special Bail so taken and accepted by the Plaintiff's Attorney, immediately after acceptance thereof, otherwise the said Clerks, Filacers, or Attornies, for default of filing such Bail, shall be struck off the Roll*.

* Vide Hil. 1650. Trin. 13 Car. II,

HILARY TERM, 1649.

R U L E I.

[After a Rule to plead in Ejectment, Judgment may be signed as in other actions.]

IT IS ORDERED, That after the ordinary Rule of this court hereafter given to the Defendant to plead in any action of Trespass and Ejectment, and the Defendant do not plead to the Declaration, Judgment may be given and entered for the Plaintiff against the Defendant, for want of a Plea, as in other actions, without special motion in court by Counsel, provided that in this present Term of St. *Hilary*, the Plaintiff shall give the Defendant special notice of this general Rule*,

* Vide Trin. 38 Car. II. Mich. 31 G. III.

HILARY TERM, 1649.

R U L E II.

[Issues to be entered before the beginning of the subsequent Term after the Record be made up.]

IT IS ORDERED, That in every Issue joined to be tried by the Country, and a Record of *Nisi Prius* thereon sued out for the trial of that Issue, if the Clerk of this court who ought to enter that Issue shall not enter it of Record before the beginning of the next Term after the Record of *Nisi Prius* sued out as aforesaid, he shall forfeit 20s. to be paid to the box for the use of the poor*.

* Vide RULES, Easter, 1657, reg. 3. Trin. 1. Jac. II. Michaelmas, 5 Ann, reg. 1.

HILARY TERM, 1649.

R U L E I I I .

[Special Bails to be filed of the Term put in.]

IT IS ORDERED, That Special Bails taken and allowed before any Judge of this court, shall be brought into the Office of the Chief Clerk in the same Term in which they were allowed to be filed of the Term of which they were taken, under the penalty, that every Clerk or Attorney who shall make default, do forfeit 5s. to the poor's box*.

* Vide Hilary 23 Car. I. If Bail be put in of one Term, which being excepted to others, are added and justify in the following Term, such Bail shall be Bail as of the Term wherein they were added, otherwise their recognizance might operate in prejudice of intermediate purchasors. 1 Salk. 100. 12 Mod. Rep. 318.

EASTER TERM, 1651.

*Monday next after the Morrow of the
Ascension of our Lord 1651.*

[Sheriffs to give sufficient Summons to Jurymen.]

IT IS ORDERED, That all Sheriffs do, upon the return of every *Venire Facias*, cause sufficient Summons to be given unto all Jurymen that are by them returned upon any Juries, for the preventing of Tales.

AND IT IS LIKEWISE ORDERED, That all Attornies do deliver unto the Sheriffs of all Counties of *England*, within forty miles of *London*, all old *Distringas*', within eight days after the end of *Hilary* and *Trinity* Term, or else none shall be received; and that all Sheriffs do cause sufficient Summons to be given to all Jurymen in those old *Distringas*', a week before the Assizes at least*.

* By Statute 7 W. III. c. 32, Constables, &c., are directed, at *Michaelmas* Quarter Sessions, yearly, to return to the Justices, lists of all Persons within their respective districts, between the age of 21 and 70, qualified

qualified to serve on Juries; and that Sheriffs do impanel no others. And by 3 G. II. c. 25, these lists are directed to be made from the parish rates of the inhabitants, and to be yearly affixed upon the church doors, that such persons as shall be improperly returned may appeal to the Quarter Sessions for relief; and duplicates of such returns are directed to be transmitted by the Clerk of the Peace from the Quarter Sessions to the Sheriff. By the above act of 7 W. III. the Sheriff shall summon the Jurors six days before they are required to serve; but by a *proviso* therein, it does not extend to Jurors summoned for the trial of causes in *London* or *Middlesex*, or to towns corporate. And by 4 & 5 W. & M. c. 24, Sheriffs returning Jurors without six days previous summons shall forfeit 10 l.

MICHAELMAS TERM, 1651.

Monday next after the Morrow of All Souls
1651.

[Due notice of Trial to be given in all causes at the
Assizes.]

“FOR preventing of inconveniencies
“which often happen by want of
“notice given upon trial of old causes at
“the

30 RULES AND ORDERS OF THE

"the Affizes, and for want of notice of
 "trial at Affizes by *Proviso*, and for put-
 "ting in of Bails upon *Habeas Corpora*
 "unduly," IT IS ORDERED, That due
 notice be given to the Defendant upon all
 trials at every Affizes, when any cause
 shall be carried to trial, as well in old
 causes as in new causes; and likewise to
 the Plaintiff, in all causes to be tried by
Proviso, as well in *London* or *Middlesex*,
 as at Affizes*.

* Vide RULES, Mich. 4 Ann. Hil. 8 G. I. Hil.
 33 G. III. East. 30 G. III. There is not any Rule
 of this Court directing particularly what notice of
 trial, and of executing Writs of Inquiry, shall be
 given; but practice has adopted the Rule of the Court
 of Common Pleas, made in the year 1654, which di-
 rects, that notice of trial and of inquiry in *London* and
Middlesex, (the Defendant dwelling within 40 miles
 of *London*,) shall be eight days, exclusive of the day
 whereon notice be given: That if the Defendant live
 above 40 miles, notice of trial and of inquiry to be
 had in *London* and *Middlesex*, be 14 days, exclusive
 of the day whereon notice be given. *Williams v.*
Jackson, East. 3 Ann. 6 Mod. Rep. 146. And by Stat.
 14 G. II. c. 17. § 4, where the Defendant resides
 above 40 miles from town, no cause shall be tried,
 either at the Affizes, or at the Sittings in *London* or
Westminster, unless notice of trial have been given ten

[No Bail to be put in on any *Habeas Corpus* till such *Habeas Corpus* be returned.]

AND IT IS FURTHER ORDERED, That from henceforth no Bail be tendered or put

in days at least before the day of trial. The Statute also requires six days notice of countermand, in like cases; which distance from the metropolis is reckoned by computed miles, and not by admeasurement. *Str.* 1216. Before the making of this Act, eight days notice of trial for the Assizes was held sufficient. 6 *Mod. Rep.* 146. Ten days notice, exclusive of the day whereon it be given, is necessary for the trial of a cause at the Assizes; but still if the *Venire* be laid in *London* or *Middlesex*, and the Defendant reside above 40 computed miles from *London*, the Plaintiff must give 14 days notice of trial; for though the act direct 10 days notice, it does not negative the previous practice of the Court, which in that case required fourteen.

If one of several Defendants reside within 40 miles of *London*, eight days notice of trial is sufficient. *Perry v. Jackson & al.* 4 *T. Rep. B. R.* 316.

Two days notice of countermand is sufficient for causes in *London* and *Middlesex*, if the Defendant reside within 40 miles of *London*; and for the Assizes, formerly four days notice were deemed sufficient. *Whitlock v. Humphries*, 2 *Str.* 849. But since the Statute of 14 *G. II. c. 17*, the Plaintiff must give six days notice of countermand

32 RULES AND ORDERS OF THE

in upon any *Habeas Corpus*, until the *Habeas Corpus*, and the causes for which the Bail

countermand in all cases where the Defendant resides above 40 miles from the place of trial; and the practice in consequence is, that now the Plaintiff must give six days notice of countermand, if the *Venus* be in *London* or *Middlesex*, and the Defendant reside above 40 miles from *London*, and the like notice in all country causes.

If after issue joined, no proceedings be had thereon for one year, or four Terms, the Plaintiff must give a Term's notice of trial. This Rule, which is adopted from the 21 section of the Rule of 1654 in the Common Pleas, was introduced, we believe, shortly after the making of that Rule: That it was the practice, early in the reign of Queen Anne, appears by the case of *Hazier or Lassauld v. Dyer*, 2 Salk. 457. 6 Mod. Rep. 37. This notice may be given at any time before the first day of full Term. *Milbourn v. Nixon & al.* 2 T. Rep. B. R. 40; which being done, the proceeding may take place immediately after the succeeding Term. For example, if issue be joined, and a year have elapsed, the Plaintiff giving notice of trial before the first day of full Term, may try his cause at the Sitting or Assizes following such Term, and the Rule requiring a Term's notice extends only to voluntary delays of the Plaintiff, in not proceeding, and not to any case where the delay is occasioned by something done by the Defendant, as having obtained an injunction, which, though it only stay execution,

Bail is to be put in, be returned, to the end it may appear what the causes are for which the Defendant is detained, and Bails may be duly taken, and the *Habeas Corpora* and Bails duly filed.

is a sufficient reason for the Plaintiff's tardiness in not proceeding to trial. *Haley v. Riley*, Doug. 71. *Bosworth v. Phillips*, 2 Black. Rep. 784. *Walker v. Stewart*, 2 Black. Rep. 618.

[24]

RULES AND ORDERS

OF THE

COURT OF UPPER BENCH,

TEMPORE REIPUBLICÆ.

RULES made and published by the
Judges of the said Court, in the
Term of Saint *Michael*, in the
Year 1654, and first printed *Anno*
Domini 1655.

SECTION I.

Concerning Officers and Attornies.

[Attornies to be admitted of some Inn of Court.]

THAT all Officers and Attornies of
this court be admitted of some
Inn of Court or Chancery, by the begin-
ning

ning of *Hilary* Term next, or in the same Term wherein they shall be admitted Officers or Attornies, and be in Commons one week in every Term, and take Chambers there; or in case that cannot be conveniently done, yet to take chambers or dwellings in some convenient places, and leave notice with the Butler where their chambers or habitations are, under pain of being put out of the Roll of Attornies*.

[And to appear personally in Court.]

That all Officers and Attornies of this court appear in person in this court, upon or before the fourteenth day of *Michaelmas* Term, and upon or before the seventh day of every other Term, upon pain of 10s. for the first default, 20s. for the second default, and putting out of the Roll upon the third default; the appearance to be entered with the Prothonotary, and the defaulters to be delivered to the Court,

* As to the place of abode of Attornies, Vide RULE, Hil. 30 G. III. The several other parts of this Rule which respect Attornies, are principally included in the Statutes of the 2 G. II. c. 23, the 12 G. II. c. 13, and the 22 G. II. c. 46.

36 RULES AND ORDERS OF THE

upon oath, if required, within three days after the time appointed for appearance.

[Sheriffs to have their Deputies in Court.]

That every Sheriff have his Deputy in this court, to return and receive Writs; and that each Deputy, yearly, before *Hilary* Term, have his name and place of his residence, in *London* or *Westminster*, set and continued up in tables in the office of the Prothonotary*.

[Clerk of Assize, Officers, and Deputy-Sheriffs to attend the Court.]

That the Clerk of Assizes, their Deputies, or Assistants, do personally appear, with their *Posters*, on the first day of *Easter* and *Michaelmas* Term; and the Deputy-Sheriffs, and all other Officers of the court, do personally appear, by the esoin day of every second return of every Term, and continue there during the residue of

By Statute 23 H. VI. c. 10, Sheriffs are directed to appoint Deputies to attend the several Courts of *Westminster*, under penalty of treble damages to the party grieved by their neglect, and a forfeiture of 40*l*.

the

the Term, without some just cause to the contrary allowed by the Court.

[Common Solicitors not to practise, unless admitted.]

That, for the future, common Solicitors be not admitted to practise in this court, unless they are admitted Attornies of either Bench; provided that it extend not to the managing of evidence at a trial, nor to private Solicitors, or Servants of Corporations, or other persons in the causes of their masters.

[Who shall be admitted Attornies.]

That none be admitted an Attorney of this court, for the time to come, unless he hath practised as a common Solicitor in this court by the space of five years now last past, or hath served, or shall have served, by the space of five years, as a Clerk to some Judge, Serjeant at Law, Practising Counsel, Attorney, Clerk, or Officer of one of the Courts at *Westminster*, unless his master die, or give over his practice; and be also, upon examination, found of good ability and honesty for such employ-

38 RULES AND ORDERS OF THE

ment; and that sufficient proof, to be put into writing, be made of such service to the Prothonotary, upon a desire of admittance, and then filed, without fee.

[No Attorney to permit another to practise in his name.]

That no person practise in another's name, nor that any Attorney knowingly permit another to practise in his name, upon pain of being put out of the Roll*.

[Attornies dismissed of one Court for misdemeanours not admitted to practise in another.]

That Attornies dismissed by one Court from their practice for misdemeanours, be not, after certificate, admitted to practise

* This Rule, as to one Attorney practising in the name of another of a different court, is wholly obsolete; and now an Attorney of one court may, with leave of an Attorney of a different court, practise in his name in that court of which he be not admitted; which practice is recognized by several Statutes, viz. 2 G. II. c. 25, and 12 G. II. c. 13. But if an Attorney permit any person, not being a sworn Attorney, to practise in his name, he is by Statute 2 G. II. c. 23, liable to be struck off the Roll.

in

in another court, it being contrary to the intent of the Law.

[Under-Sheriffs and Bailiffs not to practise as Attornies.]

That no Under-Sheriff, or Bailiff of Sheriffs or Liberties, be admitted, during such their employment, to practise as Attornies, under pain of expulsion from the employment of an Attorney, and not to be re-admitted.

[That Attornies discontinuing practice one year lose their privilege.]

That such Attornies as have not been attending their employment in this court by the space of one year last past, unless hindered by sickness, be not allowed their privilege of Attornies*.

* Generally speaking, an Attorney cannot be held to bail in any action brought against him, but must be sued by Bill filed in the court of which he be an Attorney, *Comerford v. Price*, Doug. 312, although the Plaintiff's demand be less than 40s. *Wiltshire v. Lloyd*, Doug. 380. But there are many cases to which this privilege (which is rather a privilege of the Court than personally of the Attorney) does not extend, as that mentioned in and directed by the Rule,

[That no Attorney be lesses in ejectment or bail.]

That, for the prevention of maintenance

that if an Attorney discontinue his practice for the space of one year, his privilege shall also be discontinued; so if he sue or be sued jointly with any other person, *Branthwaite v. Blackerby* and another, 2 Salk. 544. 12 Mod. Rep. 163. And if an Attorney of one of the superior courts sue an Attorney of another court, the Plaintiff's privilege shall have preference; so if he be sued in any action *qui tam*, or at the suit of the Crown, for the King may sue in what court he pleases, and no privilege is good against the King, *Whealey v. Richam*, *Fortescue* 342. So if the defendant, an Attorney, be in actual custody of the Marshal, 2 Rolls Abridg. 232. If an Attorney be executor or administrator, or in any manner assume a new character, he ought neither to sue or be sued as an Attorney, *Newton v. Rowland*, 1 Raym. 533. Dougl. 312. The privilege of an Attorney, besides his being exempt from arrest, extends to give him a lien upon all deeds, judgments, &c. until his bill be paid; and though the Court will not interfere to prevent a Plaintiff and Defendant settling a cause without first paying the Attorney's bill, yet if a Defendant, against whom a judgment has been obtained, apply to the Court for their interference in his favour, they will take care the Attorney be paid, *Mitchell v. Oldfield*, 4 T. Rep. B. R. 123. And if the Attorney (having a suspicion

tenance and brocage, no Attorney be
lessee

suspicion that the parties mean to settle, and defraud him of his costs) give the Defendant notice not to settle till his bill be paid, the Court will not (should the parties afterwards settle) stay the proceedings, unless the Attorney's bill be first paid. *Welch v. Hole*, Dougl. 238. An Attorney is also privileged from serving any office inconsistent with his duty of attending the court, of which he is the servant; as constable, *Prouse's Case*, Cro. Car. 389; soldier in the Militia, 2 Str. 1143. But see the Case of Gerard in the C. P. Blackstone's Rep. vol. 2. p. 1123, *contra*, where the Court unanimously held, that Attornies were not exempt from serving in the Militia. Being pressed for any military service, Cro. Car. 11. And he must, in such case, proceed for redress by moving the Court for his Writ of Privilege; but if he be improperly sued in any of the superior Courts, he must plead in abatement of the action. *Crosley v. Shaw*, C. B. East. 16 G. III. 2 Black. Rep. 1085. *Basingstoke v. Bonner*, 2 Str. pa. 864.

Bills may be filed against Attornies as well in Vacation as in Term-time. *Waghorn v. Fields*, 5 T. Rep. B. R. 173. *Comerford v. Price*, Dougl. 312. and *Lane v. Wheat*, there cited. And should the cause of action arise in Vacation, the Plaintiff may, in the memorandum of his bill, insert the day whereon it was filed, and thereby avoid giving the Defendant an opportunity to demur, as he otherwise might do; in which case, the memorandum should be in the following

42. RULES AND ORDERS OF THE

lessee in an ejectment, nor bail for

ing form, viz. "*Michaelmas Term, &c.* Be it remembered, that on the 14th day of *December 1792,*
 " (a day after the cause of action accrued,) *A. Dodsworth*
 " brought into the Office of the Clerk of the
 " Declarations of this court, according to the course
 " and practice of the court, his certain bill against *W.*
 " *Bowen, Gent. one, &c.* and filed the same as of
 " *Michaelmas Term,* in the 33d year of the reign,
 " *&c.* which said bill follows in these words, *&c.*"
Dodsworth v. Bowen, one, &c. 5 T. Rep. B. R.
 325.

Attornies have also the privilege, when Plaintiffs, of laying the *Venus* in all transitory actions in the county of *Middlesex,* and the Defendant cannot change it; but he has no such privilege if he be Defendant. *Yardley v. Rose,* 3 T. Rep. B. R. 573. *Pope v. Redfearne,* 4 Burr. 2027; nor if he lay his *Venus* elsewhere than in *Middlesex.* 2 Salk. 668. *Barnes,* 479.

By Statute 12 G. II. c. 13, an Attorney in custody is rendered incapable of being concerned as such in the prosecution of any action, either in his own or any other Attorney's name, on pain of being struck off the Roll; and any one lending such prisoner the use of his name to practise by is subject to the same penalty; but he may defend any action, and prosecute such as had been commenced before his imprisonment, wherein he had been concerned as Attorney for the Plaintiff.

a de-

a defendant in this court in any action*.

SECTION II.

Concerning Sheriffs and Bailiffs.

[Sheriffs to execute Writs, and not take undue Fees, &c.]

That, for the prevention and remedy of delays and abuses in Sheriffs, Under-Sheriffs, Bailiffs of Liberties and their Deputies, and other Bailiffs of Sheriffs, &c. in the execution of Process and Writs, if it shall

• This part of the Rule is still the practice as well of this Court as of the Common Pleas, and is enforced as to Attornies becoming bail, by Rule, Mich. 14 G. II. 1740; and, by another Rule of the same Term, is extended to Sheriff's Officers, Bailiffs, and other persons concerned in the execution of Process; and by construction it also extends to the Clerks of a Defendant's Attorney; *Hawkins against Magnall*, Doug. 466. the cases there cited, and *Doldern v. Feast*, 2 Str. 890. But if any such become bail, the Plaintiff cannot take an assignment of the Bail-bond as if no bail were put in, the recognizance not being void, but the Attorney is punishable by the Court for being guilty of a breach of the Rule. *Thompson v. Roubell*, cited in Doug. 466.

appear

44 RULES AND ORDERS OF THE

appear that any such Officer shall wilfully delay the execution or return of any Process or Execution, or shall take or require any undue Fees for the same, or shall give notice to the Defendant, thereby to frustrate the execution of any Process or Writ; or having levied money, shall detain it in their hands after the times of the returns of their Writs, besides the ordinary course of Amerciaments; the contempt or misdemeanor appearing, an Attachment, Information, Commitment, or Fine to be, as the case requireth; and this, as well in case of a late Sheriff or person before-mentioned, as of them at present in office.

[No Warrants to be granted by any Sheriff until he receive the Writ.]

That to reform the abuses by blank Warrants granted by Sheriffs, whereby persons are arrested and driven to extorted compositions for their liberty, without process of Law, no Warrants be granted out to any Officer, to arrest or attach any person, before a Writ first come to the Sheriff*.

* This Rule is enforced by Stat. 6 G. I. c. 21. § 53, which inflicts a penalty of 10l. on any Sheriff making out

[*Sheriffs to take moderate Fees.*]

And whereas Sheriffs have taken immoderate and excessive Fees for execution of Writs of Possession and Restitution of Possession, contrary to Law, it is declared, that such immoderate Fees ought not to be taken, and in case such shall be taken, this Court to proceed to punish the same according to Law.

SECTION III.

Concerning the Reformation and Punishment of Abuses in general.

[*Jury of Attornies to reform Abuses.*]

Ordered, That a Jury of able and credible Officers, Clerks, and Attornies, once in three years, be impannelled and sworn to inquire,

out a Warrant before he receive the Writ, and, by § 54, another 10l. if he omit to set down upon his Warrant the day and year whereon it is issued.

46 RULES AND ORDERS OF THE

1st, Of the points usually inquirable by Writ, *viz.* Falsties, Contempts, Mispri-
sons, and Offences.

2^{dly}, Of such who have been admitted Attornies or Clerks, and are notoriously unfit, their names to be presented to the court, and they to be punished or removed as the case shall require.

3^{dly}, Of new or exacted Fees, and of those that have taken them, under whatsoever pretence; and to prepare and present a Table of the due and just Fees, that the same may be fixed, and continue in every Office; and likewise for the Marshalsea.

4^{thly}, And that some persons be enjoined and sworn to give evidence, *viz.* some Clerks of the Court, and some Attornies in every county, not excluding others.

SECTION IV.

Concerning the better Preservation of Order among the Officers and Clerks, and Observation of Breach of Orders and Misdemeanors.

[Attornies to be examined before Admission.]

That the Court do once every year, in Michaelmas Term, nominate twelve or more able and credible Practisers in the Court, to continue for the year coming, for these purposes hereafter limited.

That they or any of them examine such persons as shall desire to be admitted Attornies, and appoint convenient times and places for the same; and in order thereunto, that such person as shall desire to be admitted Attornies, first attend the Prothonotary with his proof of service, then to repair to the persons appointed to examine Attornies, and being approved, to be presented to the Court with the assignation of his approbation, and then to be sworn in open Court, unless some just exception be against him.

48 RULES AND ORDERS OF THE

That they give information to the Court, from time to time, of breaches of orders, and miscarriages of Officers, Attornies, and Clerks.

That a settled course of Practice and Proceedings be settled, especially in those cases where there hath been uncertainty, and that the inconveniences in Process, Proceedings, and Pleadings may be regulated unto a due course; in order whereunto, these several things are ordered and directed, according to the method of proceedings,

SECTION V.

Concerning original Suits and Process, and where laid.

[Actions to be laid in their proper Counties.]

That actions upon the case, trespass for goods, assault, or imprisonment, arising in any *English* county, be laid in their proper counties, unless they arise where the Justices of *Nisi Prius* seldom come; and because trespass and trover for goods, battery, imprisonment, and slander must needs be notorious in what county they arise, the Attorney knowingly laying them out of their

proper

proper county, (unless in the cases before expressed,) or for some other causes, as shall be allowed by the Judges of the court, and duly made appear to be true, to be severely punished.

[Changing the Venue.]

That although the Declaration be delivered seven days before the last day of the next preceding Term, or after, yet before plea upon oath made, the Venue may be changed upon motion in the said transitory actions the next Term after, and the Defendant to plead to the new action, as he should have done in the other, without delay.

That the Venue may be changed upon oath, as before, though the Defendant come in by exigent *.

* The Stat. 6. R. II. c. 2, directing all actions to be laid in their proper counties, has been construed to empower the Judges to change the Venue if required: To this end, an application to the Court is usually made upon an Affidavit, swearing, "That the cause of action, if any, arose in the county of (*Middlesex*), and not in (*Essex*), or elsewhere out of the county of (*Middlesex*), which form of Affidavit must be strictly adhered to. *Allen v. Griffith*, 3 T. Rep. B. R.

SECTION VI.

Concerning Procefs, and serving thereof.

[Writs of Exigent and Proclamation.]

That, according to the provision of the Statute of 31 Elizabeth, (c. 3.) all Attornies

B. R. p. 495. Anonymous, 12 Mod. Rep. 442. but the Defendant cannot apply until he have appeared, for according to the established practice, the Defendant is not in a state to make any application to the Court, until he appear to the action; Smith v. Shepherd, 5 T. Rep. B. R. 9. and regularly this application should be made before plea pleaded, and to discharge the rule before replication. Dickinson v. Fisher, 2 Stra. 858. Anonymous, 2 Salk. 668. Asplin v. Gray, 1 Str. 211. But this rule admits of exceptions, as where both Plaintiff and Defendant's witnesses live in the county into which the application is made to change the Venue, and it is for their mutual ease, Foster v. Taylor, 1 T. Rep. B. R. 781.

There are two causes for changing the Venue: 1st, The usual one, viz. That the cause of action arose in the county to which it is moved to change it, on which application the Court will not always grant the Rule; or if a Rule have been obtained, (which is generally matter of course) will set it aside upon the Plaintiff's application, as if the Defendant apply to change it to a county where the

Assizes

Attornies that sue out Proceſs of Exigent
be careful that Writs of Proclamation be
delivered,

Affizes are held but once a year. *Southhouſe v. Boak*, 2 Str. 1216. *Howorth v. Willett*, 2 Stra. 1180. *Dale v. Stephenſon*, Caſes Temp. Ld. Hardw. 210. Nor to a *Welch* county; *Moore v. Turnyhougħ*, 2 Stra. 1258. *ſed quære*; and *vide Prichard v. Pugh*, Doug. 262. and the caſes there cited; upon arguing which caſe Buller Juſ. ſaid, the doubt was to whom the Writ of Inquiry muſt be directed, in caſe the Defendant afterwards ſuffered judgment by default. So in debt on ſpecialty; *Dovey qui tam v. Powell*, Caſes Temp. Ld. Hardw. 165. 12 Mod. Rep. 579. So in actions of covenant, *ibid.* 648. nor unleſs under extraordinary circumſtances in *ſcand. mag.* *Biſhop of Bath v. Bridges*, *ibid.* 401. *Duke of Norfolk v. Alderton*, 1 Lev. 56. 2 Salk. 668. Nor for publiſhing a libel, where the publication is diſtributed, and may have gone into ſeveral counties, as a newspaper, for the Defendant cannot make the uſual affidavit, that the cauſe of action aroſe wholly in one county. *Pinkney v. Collins*, 1 T. Rep. B. R. 571. *Cliffold v. Cliffold*, *ibid.* 647.; but if the libel be a letter written in *Yorkſhire*, and ſent to *Germany* by the poſt, the Court will change the Venue to *Yorkſhire*. *Metcalf v. Markham*, 3 Term Rep. B. R. 652. So if it be a letter written and ſent to a perſon in the ſame county, *Freeman v. Norris*, *ibid.* 306. Nor will the Court change the Venue in actions of debt for rent. *Duplaſ v. Chalk*, 2 Str. 878.

52 RULES AND ORDERS OF THE

delivered, and the Sheriffs do take care duly to execute the same.

The 2d cause for changing the Venue arises from a probable ground to apprehend that a fair and impartial trial cannot be had in the county where the Venue be laid; and the Court, in such case, will order the trial to be had in an adjoining county, even though the action be local. 3 Bur. 1330. and the ground of such application must in its nature be various. In an action by the Mayor of *Poole* for a duty claimed by the corporation, the Court changed the Venue to *Hampshire*, it appearing manifestly that a fair trial could not be had in *Poole*. The Mayor of *Poole* v. Bennet, 2 Str. 874.

Upon the common application to change the Venue to the county where the cause of action is sworn to have arisen, the Court can only change it into that county, and not elect a county for the trial of the cause, however convenient to the parties; as if the cause of action arise at *Poole*, which is a town and county of itself, the Court cannot without consent of the parties change the Venue to *Dorset*. *Bristow v. Tito*, Cases Temp. Lord Hardw. 135.; but this practice only applies to suits, wherein the only ground for the motion is because the cause of action arose in the county to which it be moved to change the Venue, and not to such cases wherein there is a probable ground to believe a fair and impartial trial cannot be had.

Where the Plaintiff's cause of action is in its nature local, but arising on several facts done in different counties, as in an action upon a Bail-Bond executed in one county,

[Bail Bonds and Undertakings to appear.]

That, according to the Statute of the 23 H. 6. (c. 10.) a prisoner taken upon a *Capias* in process, be not discharged till he hath given Bond to appear, unless the Plaintiff, or his Attorney, shall consent to take an appearance without Bail; and, in such case, the Warrant of Attorney to appear to be subscribed or accepted by the Defendant's Attorney, and such Warrant not to be revoked; and an attachment to be granted against the Bailiff offending

county, and assigned to the Plaintiff in another, he has his election to lay his Venue in which county he please. *Gregson v. Heather*, 2 Stra. 727. 2 Raym. 1455. *Paterfon v. Scott*, 2 Stra. 776. *Scott qui tam v. Brest*, 2 T. Rep. B. R. 238.

The Plaintiff may always discharge the Defendant's rule to change the Venue upon an application to the Court, undertaking to give material evidence of facts arising in the county in which the Venue be laid. *Anonymous*, 12 Mod. Rep. 372.

Though a Plaintiff cannot regularly move to change the Venue, yet he may in effect do it by moving to amend, and it was accordingly done, in *Stroud v. Tilly*, 2 Str. 1162. Vide also *Rivet et al. Cholmondley et al.* 2 Str. 1202. and this may be done upon a Judge's summons.

herein, or against the Attorney refusing to appear, or procure an appearance, having so subscribed or accepted*.

* By Statute 23 H. 6. c. 10, Sheriffs are enjoined to let out of prison all persons by them arrested, or being in their custody, by force of any Writ, Bill, or Warrant, in any action personal, or by cause of indictment of trespass, upon reasonable sureties, &c. where such persons be so let to keep their days in such place as the said Writ, Bill, or Warrant shall require, &c. And that no Sheriff, &c. shall take, &c. any obligation for any cause aforesaid, or by colour of his office, *but only to themselves*, of any person which shall be in their ward by the course of law, but by the name of their office, and upon condition written, that the prisoners shall appear at the day contained in the said Writ, Bill, or Warrant, and in such places as the said Writ, Bill, or Warrant shall require. And if any of the said Sheriffs take any obligation *in other form*, by colour of their office, that it shall be void. Upon the construction of this act it is held, that undertakings given to Sheriffs, or their officers, for the appearance of Defendants, are void. The only security a Sheriff can lawfully take, is a Bond made to him, as Sheriff, for the Defendant's appearance; but an undertaking given by an Attorney *to the Plaintiff* to appear for the Defendant, is not within the Statute, and the Court will enforce the performance, and grant an attachment, if he neglect to put in Bail. *Rogers v. Reeves*, 1 T. Rep. B. R. 418. Such undertaking is warranted by this clause of the
above

SECTION VII.

Concerning Habeas Corpus to Sheriffs and Gaolers.

[*Habeas Corpus* not to be returnable immediately, except in *London* and *Middlesex*, or to deliver the Defendant into custody in discharge of Bail.]

That a *Habeas Corpus cum causa ad faciendum et recipiendum*, directed to any

above Rule, and is thereby rendered irrevocable. Vide also the first clause of § 10. of this Rule.

By Statute 4 & 5 Ann. c. 16. § 20, it is enacted, That if any person shall be arrested by process out of the Courts of *Westminster*, at the suit of a common person, and the Sheriff or Officer take Bail for his appearance, the Sheriff, &c. at the request and costs of the Plaintiff, or his Attorney, shall assign to the Plaintiff the Bail Bond, by indorsing the same, and attesting it under his hand and seal, in presence of two witnesses, without stamp, provided the assignment be stamped before action brought thereon. And if the security be forfeited, the Plaintiff, after assignment, may bring an action thereupon in his own name, and the Court may, by Rule, give such relief to the Plaintiff and Defendant in the original action, and to the Bail upon the security, as is agreeable to justice, and such Rules of Court shall have the nature of a defeazance to such Bail Bond.

36 RULES AND ORDERS OF THE

Sheriff other than *London* and *Middlesex*, be not returnable *immediate*, or in the Vacation time, but at a day certain, in court, in the Term, unless it be to deliver over to prison in discharge of his Bail.

[But may in *London* or *Middlesex*.]

That such *Habeas Corpus* to the Sheriffs of *London* or *Middlesex*, may be granted in Term or Vacation time, returnable *immediate*.

[Sheriffs, &c. to make return of *Habeas Corpus* returnable *immediate* the day they be delivered, and not suffer prisoners to wander abroad by colour of such Writ; and Sheriffs, &c. to bring the Defendant in custody at the day limited in the Writ.]

That, in case of *Habeas Corpus* returnable *immediate*, the Sheriffs ought to make their return the same day the Writ is delivered, and to bring the body immediately, as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That, where a Writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet,
or

or Gaoler, the prisoner is to be brought in custody according to the Writ, at the day limited, without being permitted to wander abroad in the mean time, under pretence of such Writ.

[*Habeas Corpus ad respondendum* to be good cause of detainer.]

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or keeper of an inferior prison of a Liberty or Franchise, returnable at a day certain, in court, and to be a good cause of detainer, as well as where a *Capias ad respondendum* comes to a Sheriff.

[*Habeas Corpus ad satisfaciendum* a good cause of detainer, and how to be sued out.]

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferior Gaoler, returnable in court at a day certain, and the number Roll of the judgment to be indorsed upon the Writ by the Attorney who sues it out; and such Writ to be a cause of detainer.

[Prisoners charged with Process of other Courts, and brought up by *Habeas Corpus*, may be committed.]

That if, upon a *Habeas Corpus cum causa*, the Prisoner be returned charged with Process out of the Common Bench or Exchequer, though returnable at a day to come, the Prisoner may be committed with those causes.

[Bail taken *de bene esse*.]

That if, upon a *Habeas Corpus* or *Cepi Corpus*, the party be returned in custody, and bailable, and Special Bail be requireable, the Bail not to be taken absolutely, without consent of the Plaintiff or his Attorney; and if taken *de bene esse*, the Prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in court, to accept the same upon examination.

SECTION VIII.

*Concerning Habeas Corpus to Inferior Courts,
and Procedendo.*

[*Habeas Corpus to Inferior Courts within five miles of
London.*]

That Writs of *Habeas Corpus* directed to the Inferior Courts of *London, Westminster, Southwark*, and other Courts within five miles of *London*, may be returnable *immediate*; and if the Defendant intendeth to be bailed, then upon or within four days after allowance of the Writ, notice is to be given in writing, of the names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the plaint to be entered; or if none can be found, then notice of the premises to be left in writing with the Chief Clerk of the Inferior Court, or his Deputy, by the party that tenders the Bail, or his Attorney, and oath made thereof, otherwise the Bail not to be taken, and a *Procedendo* granted, if desired, before Bail accepted.

60. RULES AND ORDERS OF THE

[If no Bail, a *Procedendo* to issue.]

That if no Bail in such cases be put in within eight days after the *Habeas Corpus* allowed in those Courts, when it is returnable *immediate*, a *Procedendo* may be granted by any Judge of the Court, if desired, before Bail taken.

[Exception to Bail.]

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if no exception be taken within twenty days after notice given to the Plaintiff or his Attorney, of the names of the Bail, and before whom taken, then, upon oath made of such notice, the Bail to be delivered out to be filed.

[Bail to be filed.]

That if Bail upon a *Habeas Corpus* be taken before a Judge at his chambers, and not excepted against, if not filed within four days after the twenty days, a *Procedendo* may be granted, upon a certificate that it is not filed.

[Rule for Bail.]

That, in Term time, the Plaintiff in the Inferior Court may speed the Defendant to put in or to file his Bail, by Rules given; and if not filed, according to Rules, upon certificate thereof, a *Procedendo* to be granted.

SECTION IX.

Concerning Special Bail.

[That Special Bail be put in, in all Causes of Removal.]

That in all Causes of Removal, be it by *Habeas Corpus*, Privilege, or *Certiorari*, Special Bail ought to be given.

[How the *Venue* shall be laid in Causes removed from certain Courts.]

That upon a cause removed by *Habeas Corpus* out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Poole*, which are Counties where the Judges of *Nisi Prius* seldom come, if the action be transitory,

62 RULES AND ORDERS OF THE

transitory, it must be laid in the County of *Kent, Southampton, York, Stafford, or Dorset*, where the town and county lieth:

[Bail in Covenant.]

That, in Covenant, because the damages are uncertain till declaration, Bail at discretion.

[Battery, &c.]

That, in Battery, Conspiracy, False Imprisonment, no Special Bail of course, without motion and order.

[Slander.]

That, in Slander, no Special Bail, except in Slander of Title, wherein to be left at the discretion of the Judges.

[Privilege.]

That, in Privilege, (other than for fees or disbursements in court, as an Attorney in this court,) Bail at discretion of the Court, in such case wherein a suit by a common person, Special Bail is not required.

SECTION X.

Concerning Appearances, and entering thereof.

[Attornies not appearing according to their undertaking, liable to an attachment, &c.]

That an Attorney of either Bench accepting a warrant, or subscribing a process, declaration, or warrant to appear, be compelled to cause an appearance, or liable to an attachment, or put out of the Roll, as the case requires; and the party not to be received to countermand such appearance after retainer.

[That no Attorney be changed without Rule of Court, or Judges order, and notice to the adverse party.]

That no person, without Rule of Court, order of Judge or Prothonotary, and notice to the adverse party or his Attorney, change or shift his Attorney; and such Attorney newly coming in, to take notice, at his peril, of the rules whereunto the

64 RULES AND ORDERS OF THE

former Attorney was liable, had he continued*.

[Retainer by an Attorney of one Court to an Attorney of another sufficient.]

That a Retainer of an Attorney of the Common Pleas by an Attorney of the Upper Bench, *et e converso*, be a sufficient excuse to the Attorney so retained acting according to such Retainer; and the Attorney so retained, without warrant from the party, to be liable to punishment.

* This Rule is still the practice of both the Court of King's Bench, vide Macpherson *against* Rorison, Dougl. 216, and Common Pleas, Kay v. De Mattos, 2 Black. Rep. 1323. But the usual way to change the Attorney, is by a Judge's order for that purpose; which order may, if necessary, at any time be made a Rule of Court, upon a hand motion.

SECTION XI.

Rules to declare and plead.

[Prisoners when supersedeable for want of Declaration.]

If the Defendant be committed to the prison of the *Marshalsea* by the process of this Court, the Prisoner giving Rules to declare, and notice thereof to the Plaintiff or his Attorney, and oath thereof made, the Plaintiff not declaring before the end of the second Term after commitment, inclusively, then the Defendant, in reference thereunto, to be discharged of the imprisonment, in the end of the second Term, upon common Bail.

And if any Defendant be committed to any other prison upon any process of this Court, giving Rules and notice as before, and oath thereof made, if the Plaintiff do not remove the Prisoner, and declare before the end of the second Term after the commitment, inclusively, then the Defendant, in reference thereunto, likewise to be discharged of the imprisonment, in

66 RULES AND ORDERS OF THE

the end of the second Term, upon common Bail *.

SECTION XII.

Concerning Declarations.

[Repetitions of the Original Writ in Declarations to be avoided.]

For avoiding of long and unnecessary repetitions of the Original Writ in actions upon the case, and personal actions upon penal statutes, the Declarations in actions of trespass upon the case, or personal actions upon any general statute, namely, hue and cry, monopolies, or for a suit in the Admiralty, and such like, other than debt; repeat not the Original Writ, but only the nature of the action, viz. *A. B.* was attached to answer *G. D.* in a plea of trespass upon the case, or in a plea of trespass and contempt of the statute.

For the avoiding of the Common Bar and New Assignment, the Declaration upon

* As to the several times when Prisoners become superfedable, vide Rule, Hil. 26 G. III. and the notes thereto.

an Original, *quare clausum fregit*, may mention the place certainly, and so to prevent the use and necessity of the Common Bar and New Assignment.

SECTION XIII.

That unnecessary length of Declarations be reformed, and in order thereunto.

[Unnecessary length in Declarations of Covenant to be avoided.]

That in Actions of Covenant, not to repeat more of the Deed than is necessary for the assignment of the breach, and not to repeat the Covenant in the conclusion.

[In Slander.]

In Actions of Slander, long preambles to be forborn, and no more inducement than what is necessary for the maintenance of the Action, but when it requires a special inducement or *colloquium*.

[Actions on Statutes.]

That in Actions upon General Statutes, the Declaration not to repeat the Statute, but to conclude against the form of the Statute in such case made and provided, as in

68 RULES AND ORDERS OF THE

case of Debt, upon the Statute of 2 Ed. VI. for Tithes, and 32 H. VIII. for Maintenance, 21 Jac. of Monopolies.

[Debt on Judgment.]

That in Actions of Debt upon a Judgment had in the Courts at *Westminster*, to recite only the Judgment; but if a Judgment had by or against an executor or administrator, then the Action of Debt upon the Judgment to repeat the Declaration and Judgment.

[Amending Declarations.]

That the Plaintiff may amend his Declaration, paying costs, or giving an imparlance at the Plaintiff's election by the order of Court or a Judge, after it is entered, if the amendment be but a small matter, that it doth not deface the Roll.

SECTION XIV.

Concerning the entering of Rolls, and by whom.

[That the Prothonotary's Clerk enter all Rolls, and that no Rolls be carried into the Country.]

That no Roll be delivered to be entered but to the Prothonotaries Clerks. That no Roll be carried into the Country, under pain that the offender be excluded entering any more Rolls afterwards as a Clerk.

SECTION XV.

Concerning Imparlanes upon Suits by Original.

[When Imparlanes to be entered.]

“ Forasmuch as some inconveniences do sometimes happen to the Plaintiffs, by entering their Declarations in special Actions, ” It IS THEREFORE ORDERED, That the Plaintiffs in such Special Actions shall have liberty to enter

70 RULES AND ORDERS OF THE

enter Imparances the Term following, entering the same of the first Term with an *Incipitur*, as it hath been usual; and that all other Imparances be duly entered before any Issues, Demurrers, or Judgments thereupon be entered.

That if a Defendant appear the first Term and give no Rule to declare, the Defendant's Attorney may the second Term be compelled to accept a Declaration with an Imparance; and the Declaration may be entered as of that Term, with an Imparance over to the next Term, with an *Incipitur* as before, as the case shall require.

[When the Defendant may sign a *Non Proft.*]

That if the Plaintiff declare not the second Term, though the Defendant give no Rule, yet a Nonsuit may be entered at the end of the second Term, upon a continuance over by him by *dies datus*, but not the third Term, or after *.

* By the general Rule of Law, a Plaintiff must declare against a Defendant within twelve months after the return of the Writ; and by this rule, if he do not deliver his Declaration within two Terms, the Defendant may

[Imparance in Real Actions and Ejectment.]

Upon a mere Real Action, an Imparance to be of course.

That in Ejectment, or any Personal Action, if the appearance be the first return of Hilary or Trinity Term, no Imparance without consent or Special Rule.

[Imparance in Causes other than in *London* and *Middlesex*.]

In causes other than in *London* or *Middlesex*, if the appearance be before *crastinum Martini* or *mensem Paschæ*, no Imparance without consent or Special Rule; but if upon or after those returns, an Imparance of course.

[In *London* and *Middlesex*.]

In *London* or *Middlesex*, if the appearance be before *crastinum Ascensionis*, or be-

may sign Judgment of *Non Pross* at any time during the vacation of the second Term; which if he omit, the Plaintiff may deliver his Declaration at any time within the year. *Per Buller, Jus. Worley against Lee*, 2 Term Rep. B. R. 112. See also *Penny v. Harvey*, 3 T. Rep. B. R. 123.

72 RULES AND ORDERS OF THE

fore the last return of any other Term, no Imparance without consent or Special Rule, but the Defendant to plead as of that Term, within fifteen days after the end of the Term, upon rule given to answer; but if of *crastinum Ascensionis*, or the last return, then an Imparance of course.

[When a Nonsuit may be entered for want of Declaration.]

If a writ be returnable *quinque Pascha*, or the last return of any Term, the Defendant giving Rules and calling for a Declaration, if it be not delivered four days before the effoin day of the ensuing Term, or more, a Nonsuit to be entered.

SECTION XVI.

Concerning Pleading.

[When the Common Bar and New Assignment to be forborn.]

The Common Bar and New Assignment to be forborn, where a certainty is contained in the Declaration equivalent to a New Assignment.

[Pleadings to be succinct.]

That Pleadings be succinct without unnecessary repetitions.

[How to plead Outlawry.]

That in the pleading of an Outlawry the mesne process be not repeated, but the Exigent and Outlawry joined in the commencing of the suit.

[Pleading a General Statute.]

That in pleading a General Statute, the Statute be not recited, as the Statute of 21 of King James, of Limitations.

SECTION XVIII.

Concerning Demurrers.

[Causes of Demurrer to be specially assigned.]

That according to the Statute of 27 Eliz. (c. 5.) upon Demurrers, the Causes to be specially assigned, and not involved with general unapplied expressions of double negative pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other party may (as the case shall

74 RULES AND ORDERS OF THE

shall require) either join in Demurrer, or amend paying costs, or discontinue his action.

[Matters of Form.]

That it be declared that Matters of Form, as well on the part of him that demurs, as of him that joins in all parts of the pleadings, are discharged, unless such as are specially assigned upon the Demurrer*.

SECTION XVIII.

Concerning Trials, and Notice of Trials, and Inquiries.

[When new Notice of Trial to be given.]

If the Plaintiff give Notice of Trial, and he proceed not, the Plaintiff not to take it down to Trial again without new Notice to be given, unless by consent or Rule of Court.

* This Rule appears to have suggested the making of the Statute 4 and 5 Ann. c. 16. § 1. by which the Judges are directed to give judgment on demurrer, &c. without regarding any defect in the Writ, &c. except only such as shall be particularly set forth.

[Costs for not proceeding to Trial according to Notice.]

That in case of such warning, and no proceeding, the Defendant, upon motion, to have his costs of his former attendance to be taxed by the Prothonotary, unless the Plaintiff give the Defendant warning in convenient time that he would not proceed, or shew cause, to be allowed in the court, in excuse of such costs*.

SECTION XIX.

Concerning Trials at Bar.

[Allowance to the Jury after privy Verdict.]

“That for the remedy of excessive charges
“ of Trials at the Bar, especially whilst the
“ Jury lyeth out,” IT IS ORDERED, That a

• If a Plaintiff give notice of Trial and do not proceed accordingly, or countermand his notice in due time, the practice now is, upon application of the Defendant by affidavit, stating the facts, to make a Rule, referring it to the Master, to inquire whether any, and what costs ought to be paid by the Plaintiff to the Defendant, and if any, to tax and allow the same.

Jury

Jury lying out one night after a privy Verdict delivered, there be allowed, for the whole diet of each Jurymen that night, no more than three shillings and fourpence a-piece; and for two Tipstaffs and one Crier or Usher to each of them, no more than two shillings ordinary, besides the charges of the Jurors lodging.

SECTION XX.

Concerning Special Verdicts at the Bar, and by Nisi Prius.

[In Special Verdicts, Counsel to subscribe to Points.]

In finding of Special Verdicts, where the Points are single and not complicated, and no Special Conclusion, the Counsel (if required) do subscribe the Points in question, and agree to amend the omissions of mistakes in the mean conveyance according to the truth, to bring the Point in question to Judgment.

[Deeds to be found according to the Substance.]

That unnecessary finding of Deeds in *hac verba*, when the question rests not upon them,

them, but are only derivation of title, to be spared, and found shortly, according to the Substance they bear in reference to the Deed, as feoffment, lease, grant, &c.

SECTION XXI.

Concerning New Trials.

[When a New Trial may be had.]

That where a verdict finds entire damages, where damages are the principal and part not actionable, the Judgment be arrested; yet by a rule of Court, a *venire facias de novo* may issue, as upon an ill verdict, and upon the New Trial the party may sever his damages.

SECTION XXII.

Concerning Judgments.

[Concerning Judgments removed by *Habeas Corpus*, the Costs below to be allowed.]

That upon a Cause removed by *Habeas Corpus* out of an inferior court, having jurisdiction of the Cause, if Judgment be given for the Plaintiff, the Costs below to

78 RULES AND ORDERS OF THE

be considered and cast into the Judgment;
if for the Defendant, the charges of putting
in Bail.

[*Capiatur*, how to be entered.]

That in a Judgment by *non sum informatus* or *nihil dicit in Ejectione firma*, the *Capiatur* be entered upon the first Judgment.

[These and former Rules to be observed.]

And lastly, IT IS ORDERED, That as the Court doth expect that all the Rules and Orders before mentioned shall be duly observed, and are resolved severely to punish such as shall break or neglect any of them, so it is further declared, That all other former Orders and Rules yet in force, not hereby altered, suspended, or annulled, shall be likewise observed and put in execution, according to the intent and meaning of the same.

By the Court,

HENRY ROLLE,

RICH^d ASKE,

RICH^d NEWDIGATE.

EASTER TERM, 1656.

Wednesday next after five weeks of Easter.

[Attornies to attend the Court on Notice.]

IT IS ORDERED, That upon Notice given to any Clerk or Attorney of this court, to attend the court upon any motion to be made, and the said Clerk or Attorney shall neglect to appear in court, according to Notice given as aforefaid, the said Clerk or Attorney shall pay for every such offence, **10s. to the box.**

TRINITY TERM, 1656.

Tuesday next after eight days of the Holy Trinity.

[That upon the signing of every *Alias Pluries* and *Non Omittas*, the Term when the *Latitat* issued be subscribed thereon.]

“WHEREAS the Court is informed, that
 “many *Alias* and *Pluries Capias* are
 “often made by Attornies of the Common
 “Pleas, Attornies at large, Solicitors, and
 “Under-Clerks of this Court that are not
 “sworn, when there hath been no *Latitat*
 “formerly sued forth, or not within the time
 “limited by former orders; by reason where-
 “of, the Ministers and Officers of the court
 “are deceived of their duties, and the *Alias*
 “and *Pluries Capias* so made out are never en-
 “tered upon the Rolls which are appointed for
 “that purpose, and the common Bails are
 “often put in when the Plaintiff hath cause
 “to require good Bail, by which means the
 “Plaintiff loseth the benefit of the arrest; for
 “preventing of which inconveniences and
 “mischiefs,” IT IS ORDERED, That every
 Clerk, according to ancient orders, shall,
 upon

upon signing of every such Writ of *Alias* and *Pluries Capias*, and of every *Non Omittas*, subscribe, under the *Alias*, *Pluries Capias*, and *Non Omittas*, the Term when the *Latitat* was sued forth, and shew his titling-book to him that is appointed to keep the sign when the *Latitat* issued forth; and that no Writ of *Alias*, *Pluries Capias*, and *Non Omittas* in Term time be signed before a note be delivered in, subscribed the Term when the *Latitat* was sued forth, for the entering the same; and that in the Vacation time the Clerks do enter every such Writ before it be signed.

[The Prothonotaries to send for Under-Sheriffs, and see the Writs be duly sued out.]

AND IT IS ORDERED, That the Prothonotaries, or one of them, do every Term send for the Under-Sheriffs of every county, city, town, and village within this commonwealth, and cause the said Sheriffs, and every of them, to bring before them *Latitats*, *Alias*, *Pluries Capias*, and *Non Omittas* sued forth of this court, and delivered to them, to the end the same may be perused, viewed, and examined by the Prothonotaries, or one of them, whether they be duly sued forth and signed or not.

82 RULES AND ORDERS OF THE

[Writs not to be sealed before they are signed.]

AND IT IS FURTHER ORDERED, That all the said Sheriffs do attend the Prothonotaries with their Writs upon every Summons, according to their Summons.

AND IT IS ALSO ORDERED, That the keeper of the seal of the Writs issuing out of the Court of Upper Bench, for the better prevention of the aforesaid miscarriages, according to ancient orders, do not seal any Writ of *Latitat*, *Alias*, *Pluries Capias*, *Non Omittas*, *Elegit*, *Habeas Corpus*, *Procedendo*, *Certiorari*, or *Superfedeas* issuing out of the said court, unless the same Writ be first signed, with the seal and stamp appointed by the Court for that purpose.

TRINITY TERM, 1656.

Wednesday next after fifteen days of the Holy Trinity, 1656.

[That a Clerk attend the Treasury, that access be had to the Rolls.]

IT IS ORDERED, That Mr. Pagett, Clerk of the Treasury, shall appoint one to attend in the Treasury aforesaid, whereby
the

the Clerks of the court may have access to search the Records, according to ancient custom.

HILARY TERM, 1657.
*Tuesday next after fifteen days of St.
 Hilary, 1657.*

[That no Entries be made on the Prothonotaries' Rolls but by them or their Clerks, and how such Entries to be made.]

Imprimis. **I**T IS ORDERED, That, according to the ancient usage and custom of the court, none be permitted to enter any Causes or Judgments upon the Prothonotaries' Rolls but the Prothonotaries or their Clerks, to whom the entering thereof doth of right belong; and that all the Rolls be entered in a full, fair hand, with a large margin of an inch at the least, and a convenient distance at the top for the binding up of the same, and at the bottom that the writing be not rubbed out.

84 RULES AND ORDERS OF THE

[None but Clerks and Filacers to have access to the Rolls, &c.]

Item. That none be suffered to have access unto the Rolls or Records, files of Declarations, Writs, or Bails, but Clerks of the Office or Filacers, who may be answerable for any misdemeanors that may be objected against them.

[None but Clerks to deliver Books to the Judges.]

Item. That none do deliver any copies of Special Verdicts or Demurrers to the Judges of this court but the Clerks of the Office, who ought to copy and deliver them, and are to examine them and see that they be true, and be answerable for any mistake in the same.

[No *Posseas* to be delivered to any but the Prothonotaries, their Clerks, or Filacers.]

Item. That no *Posseas* be delivered out of court to any person whatever, but to the Prothonotaries or their Clerks, or to the Filacers of this court, who may be answerable for the same in case any complaint shall be objected against them.

[That no Clerk of the Office permit any person to set his name to Writs they ought to make out.]

Item. That if any Clerk of the Office shall permit or suffer any other whatsoever to write or set his name to any accountable Writ or Writs that are to be signed, or to any other Writ that belongs to the Prothonotaries of this court, and their Clerks, to make, but such as shall be written by the hand-writing of the said Clerk or his Servant, that he or they shall, for the first offence in that behalf, forfeit 20s. and for the second offence shall be expelled out of the Office.

EASTER TERM, 1657.

Wednesday next after fifteen days of Easter,
1657.

[Judgments to be docketed.]

IT IS ORDERED, That the Defendants' names, in all Judgments that shall be entered in this court, as of this Term or hereafter,

86 RULES AND ORDERS OF THE

after, shall be entered in a remembrance or docket alphabetically, for the better finding out such Judgments *.

EASTER TERM, 1657.

Saturday next after fifteen days of Easter,
1657.

Attornies to deliver to the Secondary after every Term, a Note of all Appearances entered by them.]

“ **F**OR the preventing of many inconveniences which daily happen to the
“ Plaintiffs, by the Defendants omitting the
“ filing common Bails, according to the an-
“ cient usage and course of the court,” IT IS
ORDERED, That all Clerks of the office, Filacers, and Attornies at large, do within ten days after the end of every Term, deliver to the Secondary a Note of all such Appearances as have been made unto them the Term before, and by whom they were

* Vide RULE, E. 17 Jac. I., and the annotations thereon.

made, so that he that is appointed to enter the Bails, may see whether Bails be filed for every such Appearance or not.

[Declarations to be delivered to the Clerk in Court, Filacer, and Attorney only.]

AND IT IS LIKEWISE ORDERED, That no Clerk, Filacer, or Attorney, do deliver any Declaration of this court to any Solicitor or other person, but to the Clerks, Filacers, and Attornies at large of this court, upon pain to forfeit for the first offence 10s. and for every other offence 20s.

EASTER TERM, 1657.

Friday on the morrow of the Ascension of our Lord, 1657.

[Issues to be entered before the Record of *Nisi Prius* be made, and when to be filed.]

IT IS ORDERED, That all issues joined shall be entered upon the Roll before the Record of *Nisi Prius* be made, and that the same be filed before the *Essoin-day* of the Term following.

EASTER TERM, 1658.

Monday next after the Morrow of the Ascension of our Lord, 1658.

[Causes which ought to be entered in the book of the Clerk of the Papers, shall be so entered seven days after the end of every Term.]

IT IS ORDERED by the Court, That the ancient Rule of the Court be revived, and hereafter duly observed; that all Causes depending in this court to hear Counsel, or the resolutions of the Court remaining undetermined in any Term, which ought to be entered into the court-book kept by the Clerk of the Papers, be entered into the said book within seven days after the end of that Term, to be heard the next Term following, if any of the parties intend then to proceed; to the end that the Clerk of the Papers, in convenient time after such entry, may deliver to every of the Justices of the said court, a paper of the said Causes; otherwise the said Causes not to be received to be entered into the said book, without motion therefore to be made in court.

EASTER TERM, 1659.

Friday next after the month of Easter,
1659.

[That no *Ca. Sa.* or *Fi. Fa.* be sealed before it
be signed.]

[No such Writs to be signed unless brought by
the Clerk, whose name is thereon, or his
Clerk.]

“ **F**ORASMUCH as the Court is informed
“ that many Writs of *Capias ad sa-*
“ *tisfaciendum*, and *Testatum Capias ad sa-*
“ *tisfaciendum*, Writs of *Fieri Facias*, and
“ *Testatum fieri facias*, and many times *Tes-*
“ *tatum Capias ad satisfaciendum*, and *Testa-*
“ *tum fieri facias* first made and returned,
“ are oftentimes unduly made by Attornies
“ and Under-Clerks, and Solicitors that are
“ not sworn, by which means the Plaintiff
“ is put to unnecessary charges, and the
“ Defendant being arrested, is discharged
“ upon a *Superfedeas, quia erronee*, and
“ after the Defendant absenteth himself, or
“ eloineth his goods, that execution cannot
“ be made, whereby the Plaintiff loseth
“ his

90 RULES AND ORDERS OF THE

“ his debt ;” IT IS THEREFORE ORDERED, That no Writ of *Capias ad satisfaciendum*, or *Testatum Capias ad satisfaciendum*, or *Fieri Facias*, or *Testatum fieri facias* be sealed before the same be signed with the *Latitat* sign, upon pain of 20s. AND IT IS FURTHER ORDERED, That the Clerk that keepeth the *Latitat* sign shall not sign any Writ of *Capias ad satisfaciendum*, or *Testatum Capias ad satisfaciendum*, or *Fieri Facias*, or *Testatum fieri facias*, unless they be brought to him to be signed by the Clerk of the Office, whose name is to the same Writ, or his known servant, and no fee to be taken for signing the same.

Note. It is observable, that the Rules during the Protectorship are wholly in English; the several transmutations of language in our Laws, every one conversant in them must know. To the Saxon, in the reign of William the First, succeeded the Norman French, which continued till the reign of Edward the Third; in the 36th year of whose reign it was enacted, That all pleadings should be debated and judged in the English, and inrolled in the Latin tongue; which continued in use until the
time

time of Cromwell, when the records were altered in their languages, and the English then first became the language of the law; in which it continued until the Restoration, when the Latin was again restored, and continued until finally abolished by Stat. 4 G. II. c. 26.

RULES AND ORDERS
OF THE
COURT OF KING'S BENCH,
TEMPORE CAROLI SECUNDI.

TRINITY TERM, 13 Car. II. 1661.

[Bail-pieces to be filed within twenty days after
the Bail accepted.]

IT IS ORDERED, That every Attorney of this court, who shall put in any Bail by recognizance before the Chief Justice, or any of the other Justices of this court, and the Plaintiff or his Attorney shall accept of such Bail, that then the Attorney putting in such Bail shall cause that Bail to be filed within twenty days after such acceptance, under the penalty of 40s.; and that all Bails now taken *de bene*

benefit esse, and which are accepted by the Plaintiff's Attorney, and now remaining with any Judge of this court, shall likewise be filed within twenty days now next following, on the like penalty of 40s.

EASTER TERM, 14 Car. II. 1662.

[Clerks and Attornies, on notice, to attend Motions in Court.]

IT IS ORDERED, That every Clerk and Attorney of this court, upon notice to them given, do attend any Motion in court according to notice, under the penalty of forfeiting ten shillings, to be paid by such Clerk and Attorney.

TRINITY TERM, 14 Car. II. 1662

[Bill of *Middlesex* or *Latitat* to be sued out in Ejectment.]

IT IS ORDERED by the Court, That in every action of a Plea of Trespass and Ejectment to be brought, if the lands lie in the county of *Middlesex*, then a Bill of *Middlesex* shall be sued out; and if the lands lie out of *Middlesex*, then a Writ of *Latitat* shall be sued out against the casual Ejector, in every such Ejectment named Defendant; and also that Common Bail be filed for such Defendant, before that any Declaration by Bill in such action shall be delivered to any tenant in possession of the tenements in such Declaration specified; And that if an Attorney of this court for the Plaintiff shall make default in the performance thereof, then no Judgment shall be entered for the Plaintiff against the casual Ejector; nor shall the tenant in possession confess lease, entry, and ouster of the tenements in such Declaration mentioned, to try the issue between the Parties aforesaid*.

* Vid. R. Mich. 33 Car. II. and Trin. 4 W. & M.

It is now unnecessary to sue out a Bill of *Middlesex* or *Latitat*, the Defendant by filing Common Bail, admitting

TRINITY TERM, 14 *Car.* II. 1662.

[Attornies to appear in court every Term, and enter their Pleadings.]

IT IS ORDERED by the Court, That all Attornies of this court shall appear in court in their proper persons, upon or before the fourteenth day of the Term of Saint *Michael*, and upon or before the seventh day of every other Term, under the penalty of forfeiting, for the first default, ten shillings, and for the second, twenty shillings; and that every Attorney shall enter in the office of this court, all Pleas and Demurrers in Law within three days after the end of every Term, and that no Rule shall be made by any Justice of the court of the Lord the King, before the King himself, in any action in the said court pending, after the third day next after the end of any Term; and that no Attorney of the said court shall attend any of the said Justices to make

admitting his having been in custody of the Marshal.

make any Rules, after the third day next after the end of any Term; and that no Rules shall be made peremptorily to attend after the third day after the end of any Term; and that all Rules made after the third day after the end of any Term shall be void.

HILARY TERM, 15 Car. II. 1662.

RULE I.

[Attornies to attend the Master's appointment.]

IT IS ORDERED, That every Attorney of this court personally attend Master *Jebyll*, at times by him to be prefixed, upon notice thereof to them given, to examine Causes that shall be in reference before him; and that every Attorney who shall make default therein, for such default shall forfeit ten shillings*.

* Vide RULE, Hilary, 32 G. III.

HILARY TERM, 15 Car. II. 1662.

R U L E H.

[That no *Alias Distingas*, with *Tales*, be issued before the former Writ returned be delivered to the Secondary.]

IT IS ORDERED by the Court, That no Writ of *Alias* or *Pluries Distingas Juratorum*, with a *Tales*, for a trial of an Issue at Bar, shall issue before the precedent Writ of *Distingas Juratorum*, with a pannel of the names of the Jurors annexed thereto, be delivered to the Secondary of this court; to the intent that the Issues forfeited by the Jurors for their non-appearance upon the foregoing Writ may be duly estreated.

EASTER TERM, 15 Car. II. 1663.

*Die Mercurii prox' post sept' Paschæ, anno
15 Car. II. Regis.*

R U L E I.

[Writs to be signed before they be sealed.]

IT IS ORDERED by the Court, That the Keepers or Deputy Keepers of the Seal appointed for sealing of Writs issuing out of the Court of King's Bench, or any of them, shall not seal, nor suffer to be sealed, any Writ or Writs of *Latitat*, *Habeas Corpus*, *Subpæna*, *Scire Facias*, or other signable Writs issuing out of the said court, unless the same Writs respectively be first signed with the Sign of the said Court, kept by the Clerk appointed for that purpose*.

* Vide RULE, Trinity 1656, R. 1.

EASTER TERM, 15 Car. II.

*Die Veneris in Crast. Ascen. Domini, anno
15 Car. II. Regis.*

R U L E II.

[No Bailiff, &c. to take any Warrant to acknowledge a Judgment, but in the presence of an Attorney for the Defendant.]

IT IS ORDERED by the Court, That no Bailiff or Sheriff's Officer shall presume to exact or take from any person, being in his custody by arrest, any Warrant to acknowledge a Judgment, but in the presence of an Attorney for the Defendant, which Attorney shall then subscribe his name thereunto; which said Warrant shall be produced when the said judgment shall be acknowledged: and if any Bailiff or Sheriff's Officer shall hereafter offend or do contrarywise, he shall be severely punished for so doing. AND IT IS FURTHER ORDERED, That no Attorney shall from henceforth acknowledge or enter any Judgment, by colour of any Warrant gotten from any

H 2

Defendant

Defendant being under arrest, otherwise than as aforesaid *.

* Vide RULE, Easter Term, 4 Geo. II.

This and the Rule of Easter 4 G. II., being made to protect prisoners from fraud, and give the Court a summary controul over Judgments confessed by them, have received a very liberal construction; and it has been held, that the Court have the same jurisdiction of the matter before, as they would have after the Judgment entered upon a Warrant of Attorney so obtained, and may order such Warrant of Attorney, and all Collateral Securities to be delivered up and cancelled. Duncan against Thomas, Doug. 196. But these Rules only apply to Prisoners in custody upon mesne process. Fell v. Riley, Cowp. 281. 2 Stra. 1245; and a *Cognovit* it is strictly not within the Rules, Parkinson v. Caines, 3 T. Rep. B. R. 616: Yet if a Prisoner by fraud be induced to give his creditor any security which in *foro conscientiae* he ought not to receive, (although it be not strictly within these Rules,) yet the Court on application will give relief. Parkinson v. Caines, Fell v. Riley. If a Defendant be arrested, and whilst in custody he execute a Warrant of Attorney to a Creditor, not the Plaintiff in the Action, whereon he is imprisoned, there need no Attorney be present. 7 Mod. Rep. 115. 2 Raym. 797. In Inman v. Chew, 6 Mod. Rep. 85, the following points were resolved: 1st, That if a Defendant under arrest confess Judgment in the King's Bench, in the presence of a sworn Attorney of the Common Pleas, it is well; and so *vice versa*. 2dly, Though an Attorney be present, yet if there be bad practice in obtaining a Warrant

EASTER TERM, 15 Car. II.

Die Lunæ prox' post Crastin' Ascen' Dom'
anno 15 Car. II.

R U L E III.

[At what times the Clerks of the Office shall
 account with the Secondary.]

IT IS ORDERED, That if any Clerk of the
 Office do not make his Account with the
 Secondary within ten days after the end of
 Hilary

rant of Attorney, the Court will set it aside. 3dly, If
 one under arrest by process of an inferior Court, give
 a Warrant of Attorney to confess Judgment in *that*
 Court, this Court will not set it aside, though no At-
 torney be present. 4thly, If one under arrest by such
 process give a Warrant of Attorney to confess Judg-
 ment in the King's Bench, and an Attorney be not
 present, it will be ill. 5thly, If a man under arrest be
 seemingly discharged, with design that he shall give a
 Warrant of Attorney to confess a Judgment, without
 having an Attorney present on his behalf, and to re-take
 him if he do not execute it, it will be set aside. 6thly,
 If such person be really discharged, yet have probable rea-
 son to think otherwise, and under such apprehensions he
 give a Warrant to confess Judgment, it will be set aside
 if he be under terror of arrest.

If a man give a Warrant of Attorney to confess
 a Judgment, and die, it may be entered up at any
 time before the ensuing Term next after his decease,

Hilary Term; within six days after the end of Easter Term; within ten days after the end of Trinity Term; and within eight days after the end of Michaelmas Term; according to ancient custom, every Clerk so offending shall, for the first offence, be suspended from his privilege of practice as a Clerk of the Office, until he have made his Account and paid the money due thereupon; and for the second offence, at the discretion of the Chief Clerk or Secondary, to suffer expulsion *.

the Judgment having relation back to the first day of the Term of which it be entered. 6 Mod. Rep. 86.

It frequently happens, that Bonds and Warrants of Attorney for confessing Judgments thereupon, given in Vacation, become payable, and are entered up before the following Term; in which cases, as the Judgments will have relation back to a day anterior to the date of the Bond whereon the Plaintiff must declare in his entry, if he state it to have been made upon the day it bears date, the Judgment will be erroneous; in such case therefore, the entry ought to state the Bond to have been made some day precedent to the first day of the Term whereof his Judgment is entered. This caution ought also to be used in Actions upon Bonds under the like circumstances. 7 Mod. Rep. 38.

* Vide Rule, Trin. 20 Car. II.

All Rules for accounting with the Secondary since the disuse of Clerks in Court, and that Attornies at large

EASTER TERM, 15 *Car.* II.

R U L E IV.

[Sheriffs to appoint Deputies.]

IT IS ORDERED, That every Sheriff shall make, and cause to be entered on record, a sufficient Deputy to receive all manner of Writs and Proceſs, under the pains and penalties mentioned in the ſtatute in that behalf made, in the 23d year of the reign of the late king Henry the Sixth (c. 8.); which law from henceforth ſhall be duly put in execution.

large have been permitted to enter their own Pleadings, are become obſolete. The Attornies now pay for their Entries, and all other Fees of Office upon doing the act, whereupon the Fee accrues due. Formerly, the Secondary, who is immediately under the Chief Clerk, was the ſuperior of the Clerks in Court, and from thence obtained the denomination of Maſter, which is now adopted by the Court. The Clerks in Court were the Agents of the Attornies at large, as is now the practice of the Plea-ſide of the Court of Exchequer, and were accuſtomed at certain periods of time after every Term to account with the Secondary; which day of account was called the Continuance Day; the antecedent Term's account being continued to that time, from whence the ſucceeding Term's account had its beginning.

104 RULES AND ORDERS OF THE

[To attend the Court.]

[No Blank Warrants to be issued, nor any Warrant, until the Writ be delivered.]

AND IT IS FURTHER ORDERED, That the said Sheriffs, or their sufficient Deputies, shall give their personal attendance in *Westminster Hall* daily, in the Term-time, that so they may with the more convenience dispatch those services which appertain to their offices respectively; and that no Sheriff, or Sheriff's Deputy, shall deliver or make, or cause or suffer to be delivered or made, any Warrant or Warrants before the Writ or Writs be duly sued forth and delivered to the said Sheriffs or their Deputies respectively, neither shall the said Sheriffs or their Deputies deliver, or cause or suffer to be delivered, any Blank Warrants, nor shall any Clerk or Attorney of this court, receive or procure to be made any such Blank Warrants, upon pain of severe punishment and fine, to be imposed upon the said Sheriffs and their Deputies, and utter expulsion of the said Clerks or Attornies respectively offending in the premises*.

* Vide RULES, Hil. 21, and Easter, 23 Car. I.

By St. 6 G. 1. c. 21. No Sheriff, &c. shall make out any Warrant before he have the Writ, on pain of

TRIN. TERM, 15 Car. H. 1663.

R U L E I.

[In Ejectment, the Defendant to give Notice of the Tenements he means to defend.]

IT IS ORDERED by the Court, That in every Action of Trespass and Ejectment, where the Defendant by the Rule of Court shall confess Lease, Entry, and Ouster for so much of the premises in the Declaration mentioned as are in possession of the said Defendant or his under-tenants; the Attorney of such Defendant shall immediately deliver to the Plaintiff's Attorney a certain Note in writing, of the Tenements so being in possession of the said Defendant or his under-tenants*.

10/; and every Warrant shall have the day and year whereon it be made out set down thereon, under the like penalty.

* Vide RULE, Michaelmas, 33 Car. II.

If the Defendant defend only for a part of the premises for the recovery of which the Ejectment is brought, the Notice required by this Rule, distinguishing for what part he means to defend, is usually inserted in the margin of the consent Rule filed upon his appearance.

104 RULES AND ORDERS OF THE

The same Term.

RULE II.

[Time of sealing Records of *Nisi Prius*.]

IT IS ORDERED by the Court, That no Record of *Nisi Prius*, for the Trial of an Issue at the Assizes, be sealed after the end of one month next after the end of the Term*.

MICHAELMAS TERM, 15 Car. II.
1663.

RULE I.

[That the true Place of Abode and Addition of every Deponent be inserted in their Affidavits.]

IT IS ORDERED, That the true Place of Abode, and true Addition of every Person who shall make Affidavit in Court here, shall be inserted in such Affidavit †.

* Further enforced by RULES, 31 Car. II. Mich. 5 Ann. East. 7 Geo. I.

† Vide RULE, Easter, 31 Geo. III.

Beside the Place of Abode and Addition of the Deponent directed by the above Rule, every Affidavit must be

MICHAELMAS TERM, 15 Car. II.
1663.

RULE II.

[No Writ with an *Ac etiam* to issue against any Heir, &c.]

[A Defendant lawfully delivered from an Arrest shall not be again arrested.]

IT IS ORDERED by the Court, for the avoiding of oppression by colour of Process issuing out of this court, That no Attorney presume, at his peril, to make, or cause to be made, any Precept or Writ, with a clause of *Ac etiam*, &c. against any Heir, Executor, or Administrator, nor in any case where by the course of the court Special

be intituled of the Court and Cause to which it appertains, so as to attach it to a matter whereof the Court hath jurisdiction, or it cannot be read; for the Court having no jurisdiction of the matter, can take no notice of such Affidavit, even with consent of the parties. *Owen v. Hurd*, 2 T. Rep. B. R. 643. *Wood v. Webb*, 3 Term Rep. B. R. 253. The King against the Sheriff of Middlesex, *ibid.* 133. So that upon affidavit of debt to hold to Bail upon mesne process, it seems that the title of the cause is requisite.

Bail

108 RULES AND ORDERS OF THE

Bail be not required : And that if a Defendant be lawfully delivered from an Arrest upon any Process, the same Defendant shall not be again arrested at the same time by virtue of any Process at the suit of the same Plaintiff; and if any Attorney or Plaintiff shall offend in the premises, the name of such Attorney so offending, shall be struck off the Roll of Attornies : And further, as well the said Attorney as the Plaintiff in the said Process named, shall be respectively punished as to the Court shall seem just.

• This, like all general Rules, as to the latter branch of it, admits of certain exceptions. The spirit of the Rule is to prevent a Defendant being harassed, by repeated vexatious and wanton Arrests for the same demand; there are therefore certain cases to which the Rule does not apply, as if a Plaintiff die and the Action thereby abate, (*vide* Stat. 8 and 9 W. 3. c. 11.,) for, *actus Dei nemini facit injuriam*; so if in certain stages of the cause the Plaintiff become bankrupt: for the right of action is then by act of law transferred, and the Representatives of the deceased, and Assignees of the bankrupt Plaintiff, take his rights with undiminished powers of recovery. So if a Defendant be arrested, and upon the trial of the cause it be referred to an arbitrator, who awards a sum to the Plaintiff sufficient to hold the Defendant to Special Bail for the money awarded. *Collins v. Powell*, 2 T. Rep. 756. So if

COURT OF KING'S BENCH 1663

MICH. TERM, 15 Car. II. 1663.

RULE III.

[Fee to the Clerk of the Bills or Declarations.]

IT IS ORDERED by the Court, That every Clerk of this court in every Term, at the time of rendering his account, shall pay to the Officer of this court who receives Bills here in court to be filed of Record, the ancient fee of two shillings for every Attorney and Filacer of this court,

the Court have been imposed upon in allowing Bail to justify, and it appear manifestly the Bail were perjured, the Plaintiff may discontinue his action and again arrest the Defendant for the same demand. *Olmus against Delaney*, 2 Str. 1216. See also there cited *Belchier v. Gansel*, Burr. Rep. 2052. But where a Defendant having been arrested lay in gaol until he was superseded, afterwards meeting the Plaintiff gave him a promissory note for his demand, and being again arrested, the Court discharged him on Common Bail, for the note did not extinguish the former cause of action. 2 Str. 1218. A Defendant may be held to Special Bail in an Action upon a Judgment for 10*l.* damages and costs, though the original debt alone were under that sum, for this case is not within the Rule. *Lewis v. Pottle*, 4 T. R. B. R. 570.

who

20 RULES AND ORDERS OF THE

who retains such Clerk to act and enter Suits and Business in this court here depending*.

MICH. TERM, 15 Car. II. 1663.

RULE IV.

[The true Addition of Defendants to be made in all Actions, *Vi et Armis* and *contra Pacem*.]

IT IS ORDERED by the Court, That in all Actions of Trespass, where the Cause of Action is allowed to be done by Force and Arms, or against the Peace of the Lord the King, to be prosecuted in this court, the true Addition, Degree, Quality, or Mystery, and also the true Place of Abode of every Defendant, shall be inserted in every such Action at the peril of the Plaintiff's Attorney †.

* Further enforced by Rule, East. 19 Car. II.

† This Rule, like the Stat. of Additions, 1 H. 5. c. 5., applies only to suits commenced by Original Writ; and the reason of its being made, was, that Sheriffs might have the true Additions of Defendants in all Actions

HILARY TERM, 15 & 16 Car. II.

1663.

RULE I.

[At what times the Clerks in court shall account
with the Secondary.]

IT IS ORDERED by the Court, That every Clerk here in court shall render his account to the Secondary of the court, within six days next after the end of every Easter Term, and within eight days next after the end of every Michaelmas Term, and within ten days next after the end of every Trinity and Hilary Terms, according to ancient custom and the several former Rules of this court; and that every Clerk

tions for forceable injuries, to enable them the better to collect the *Capiatur Fines* due thereupon to the Crown; but since the Stat. 5 & 6 W. & M. c. 12. has directed a sum of six shillings and eight pence to be paid by Plaintiffs upon signing Judgment, and to be allowed to him upon the taxation of costs, instead of those fines, this Rule is become obsolete; yet still a Defendant, in case of a wrong Addition, may plead in abatement of the Action. 2d Institutes, 671. Martin v. Gell, 12 Mod. Rep. 211.

hereafter

112 RULES AND ORDERS OF THE

hereafter offending in the premises, for his first offence, shall be suspended from his privilege of practising, and no Writs in his name shall be signed, nor his Rolls of Entries be received into the Office until he shall have rendered his Account, and paid what shall thereupon appear due; and for his second offence he shall be struck off the Roll of Clerks of this court at the discretion of the Chief Clerk or Secondary*.

HILARY TERM, 15 & 16 Car. II.
1663.

RULE II.

[Trying Issues, sealing Records, entering Issues, &c.]

IT IS ORDERED by the Court, That Issues joined of any preceding Term shall be tried within the first week of every Term; and that the *Custos Brevium* of this court shall not seal any Record of *Nisi*

* Vide Easter, 15 Car. II. *Ex parte*

Prius

Prisus of such Issues after one week of every Term, without the special licence of the Chief Justice of this court. AND IT IS FURTHER ORDERED, That unless the causes to be tried at *London* and *Middlesex* be entered with the Chief Justice of this court, by the space of two days before the sitting upon which such causes are to be tried, the Marshal may enter a *Ne Recipiatur* at the request of the Defendant or his Attorney*.

EASTER TERM, 16 Car. II. 1664.

RULE I.

[Superfeding Prisoners.]

IT IS ORDERED by the Court, That every Attorney of this court, who shall discharge any Prisoner, charged with any Action here in court pending, out of Prison for want of prosecution, within three Terms, shall give notice to the Plaintiff in

* Vide RULES, Hil. 20 & 21 Car. II. and Michaelmas, 4 Ann.

such Action, or his Attorney, to appear before some Justice of this court, to shew cause why such Prisoner ought not to be discharged for want of prosecution, before he shall procure any Warrant under the hand of any Justice of this court for the discharge of such Prisoner out of Prison; and if the Plaintiff in the same Action, or his Attorney, upon such notice to them or either of them given, shall not appear to shew cause to the contrary, then, upon oath made of such notice, such Prisoner, against whom no prosecution hath been within three Terms then preceding, shall be discharged out of Prison, at the peril of the Attorney, who shall procure such Prisoner to be discharged in form aforesaid*.

14. Vide Rules, Trials 2 G. I. East. 5 W. & M.
H. 26 G. III.

Wife of the late John H. Jones, deceased.

Same Term, 1664.

RULE I.

[Allowing Writs of Error, and putting in Bail thereon.]

IT IS ORDERED by the Court, That every Attorney of this court, who shall prosecute any Writ of Error upon any Judgment obtained in the court of our Lord the King, before the King himself, returnable in the Court of Exchequer Chamber, shall allow such Writ of Error, with the Clerk of the Errors of this court, within four days next after notice given to the Plaintiff's Attorney, of such Writ of Error so by him sued out; and also shall give in Bail upon such Writ of Error within four days next after the allowance of such Writ of Error, if Bail thereon ought to be acknowledged; or in default thereof, Execution may be taken out upon such Judgment, notwithstanding the Writ of Error sued out in form aforesaid *.

* Vide R. East, 36 Car. II. Michaelmas, 5 W. & M.

RULES AND ORDERS OF THE

TRINITY TERM, 16 *Car.* II. 1664.

[Attornies not to deliver or receive any Pleadings which ought to be filed with the Clerk of the Papers.]

IT IS ORDERED by the Court, in full court, That no Attorney or Clerk attending here in court, presume to deliver to any other Attorney or Clerk attending here in court, or to any other person, or to accept from any other Attorney or Clerk attending here in court, or from any other person, any Plea that ought to be left in the Office of the Clerk of the Papers, or a Copy of such Plea, before the same be left in the same Office of the Clerk of the Papers; and that such Copy, after the Plea so left, be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers, and signed under the hand of one of the Clerks attending there, under the penalty that every Attorney and Clerk attending here in court, for the first offence so committed, shall forfeit ten shillings, to be paid to the box for the use of the poor; for the

second offence twenty shillings, in like manner to be paid to the box for the use of the poor; and for the third offence, such Attorney or Clerk shall be expelled from the Court here, according to the Rule in that behalf made, Trinity, 2 Jac. I. *.

MICHAELMAS TERM, 16 Car. II.
1664.

[At what time Attornies shall File Common Bail.—Notice of Special Bail.—Bail on *Habeas Corpus*, and Exception thereto.—Judges' Clerks to give the Secondary a note of all Bails put in.]

IT IS ORDERED by the Court, That every Attorney of this court, who shall appear for any Defendant in any Action in which Special Bail is not required, shall file Common Bail for such Defendant within six days next after the end of the same

* Vide Michaelmas, 2 W. & M., and the notes thereto.

Term of which he appeared; and that every Attorney of this court, who shall put in any Special Bail, before any Justice of this court, *de bene esse*, upon a *Capi Corpus*, shall give notice thereof without delay to the Plaintiff or his Attorney; and if the Plaintiff shall not except to that Bail for insufficiency thereof, within twenty days next after Notice thereof, given to him or his Attorney, then, upon Affidavit in writing of such Notice, on the back of the said Bail-piece, (for which Affidavit no fee shall be taken,) that Bail shall be filed by the Defendant's Attorney within four days next after the end of the aforesaid twenty days; and that every Attorney of this court, who shall put in any Special Bail before any Justice of this court, *de bene esse*, upon a Writ of *Habeas Corpus*, if the Plaintiff shall not except to the Bail, for insufficiency thereof, within twenty-eight days after the putting in thereof; then that Bail shall be filed by the Defendant's Attorney, within four days next after the end of the twenty-eight days, under the penalty that every Attorney making default, either in not giving Notice as aforesaid, or in not filing the several Bails, or either

either of them, in form aforesaid, shall forfeit and pay to the box of this court, for his first default five shillings, and for his second default shall be struck out of the Roll of the Attornies of this court. AND IT IS FURTHER ORDERED, to the intent that the Bails aforesaid may be duly filed, That the Clerks of the Justices of this court, in whose hands the Bails so taken *de bene esse* shall remain, shall, within six days next after the end of every Term, give a Note in writing to the Secondary of this court, of all Bails of the foregoing Term so put in and then remaining in their hands, together with the names of the Attornies who put in those Bails, and the day of putting them in*.

* Vide RULE, Michaelmas, 22 G. III. and the notes thereto.

280 RULES AND ORDERS OF THE

EASTER TERM, 28 Car. II, 1666.

[Clerk of the Papers to receive no Special Pleas, unless signed by Counsel, and to insert their Names in all Copies; Attornies to do the like in Copies for the Judges.]

IT IS ORDERED by the Court, That no Special Pleas or Demurrers in Law, in any Cause here in court now depending, or hereafter to be prosecuted, shall be received by the Clerk of the Papers of this court, before such Pleas or Demurrers in Law shall be signed with the proper hand of some Counsel in that behalf retained, AND IT IS FURTHER ORDERED, That the Clerks of the Papers of this court, in all Copies of Pleadings and Paper Books by them made, shall write under such Copies of Pleadings and Paper Books the names of the Counsel who signed such Pleadings, as well on the part of the Plaintiff as on the part of the Defendant; and that in all Books to be delivered to the Justices of this court, the Names of the Counsel who shall sign those Pleadings, as well on the part of the Plaintiff as on the part

part of the Defendant, shall be subscribed in those Books by the Clerks or Attorneys who deliver the same *.

TRINITY TERM, 18 Car. II. 1666.

[That a Rule to plead in Ejectment be entered before Motion for Judgment against the casual Ejector.]

“ **W**HEREAS, by the ancient course of
 “ this court, Rules to plead ought
 “ to be given and entered with the Clerk
 “ of the Rules of this court, in all Actions
 “ in this court brought and depending,
 “ which course hath lately been neglected
 “ in Actions of Trespas and Ejectment;
 “ for prevention whereof for the time to
 “ come,” IT IS ORDERED, That every
 Attorney of this court shall enter with the
 Clerk of the Rules, a general Rule to plead
 in every Action of Trespas and Ejectment,
 before any Motion shall be made in court
 for Judgment against the casual Ejector †.

* Vide RULE, Mich. 2 W. & M., and the notes thereto.

† Vide Hil. 1649, and Mich. 31 Geo. III.

EASTER TERM, 19 *Car.* II. 1667.

[Attornies to pay 2s. *per* Term for filing Declarations.]

IT IS ORDERED by the Court, That every Clerk, Filacer, and Attorney of this court shall pay to the Officer of this court appointed for receiving, filing, and keeping Bills and Declarations here in court to be filed, the ancient Fee of two shillings at the end of every Term, for his salary, for the receiving, filing, and keeping the Bills and Declarations aforesaid, according to the several orders of this court made in that behalf; and if any Clerk, Filacer, or Attorney of this court shall refuse to pay that Fee, upon reasonable request made to him for that purpose, then such Clerk, Filacer, and Attorney shall be suspended from the privilege of his practice in this court, at the discretion of the Chief Clerk or Secondary of this court,

• Vid. R. Michaelmas, 15 *Car.* II.

TRINITY TERM, 20 *Car.* II. 1668.

[Clerks in Court to account severally every Term with the Secondary.—If any Clerk suffer Writs to be signed, or Rolls filed, in his name, for any other arrear, he shall pay such arrears.]

IT IS ORDERED by the Court, That every Clerk of this court shall account severally by himself at the end of every Term, according to the ancient Rules of this court made in that behalf; and that two, three, or more of them shall not account together in the name of one Clerk, as lately hath been used. AND IT IS FURTHER ORDERED, That if any Clerk of this Court do sign, or suffer any Writ to be signed, or file, or suffer to be filed, any Rolls in his own name, for any other Clerk of the court who is in arrear with his accounts in the Office; then such Clerk who so signs, or suffers to be signed, any such Writ, or files, or suffers to be filed, any such Rolls in his own name, shall pay the arrears of the accounts of such Clerk, for whom any such Writs were so signed, or Rolls filed by him.

HILARY TERM, 20 & 21 *Car.* II.
1668.

[Issues joined of a former Term, to be tried the first or second sitting of the following Term.]

IT IS ORDERED by the Court, That Issues joined of any former Term shall be tried the first or second sitting of every Term peremptorily; and that the *Custos Brevium* of this court do not sign any Record of *Nisi Prius* to be tried contrary to this Rule *.

TRINITY TERM, 22 *Car.* II. 1670.

[No Defendant to put in Bail for a greater Sum than is expressed in the Process, and if the Plaintiff declares for more, the Bail not to be liable.]

IT IS ORDERED by the Court, That no Defendant who shall be arrested by virtue of any Process issuing out of the court

* Vid. RULES, Hil. 15 & 16 *Car.* II. and Mich. 4 Ann.
of

of the Lord the King, before the King himself, shall be compelled to put in Bail for a greater Sum than is expressed in such Process. AND IT IS FURTHER ORDERED, That if the Plaintiff shall declare against the Defendant, upon any Bail by him put in, for a greater Sum than is expressed in the Process upon which the Defendant was arrested, then the Bail so put in shall not be chargeable in that Action *.

HILARY TERM, 25 Car. II. 1672.

[That one or more persons be permitted to attend the sealing of Writs on behalf of the Crown.]

IT IS ORDERED, That the Officers of this court, who have the custody of the Seal of the court, permit one or more persons to attend at all times the sealing of Writs of the same court, on the behalf of our Lord the King, and put a stamp or mark upon such Writ so sealed or to be sealed,

* Vide RULE, 5 Geo II. R. 2.

until

126 RULES AND ORDERS OF THE

until this court shall further order, so that no impediment may thereupon arise to the Officers aforesaid, in sealing the said Writs *.

MICHAELMAS TERM, 28 Car. II. 1676.

[That the Marshal suffer no Prisoner to go out of the Rules, without a Rule of Court.]

IT IS ORDERED, That the Marshal of the Marshalsea of this court for the time being do not permit any person whatsoever, remaining in his custody upon any action, or in execution, or for any contempt whatsoever detained within the said Prison, or within the liberty of the Rules of the said Prison, to go out of the said Prison, or the liberty aforesaid, without a special Rule of this court in that behalf first had and obtained, upon the peril that may ensue †.

* Vide RULE, Easter, 32 Car. II. R. 2.

† This rule is enforced by Stat. 8 & 9 W. III. c. 27. ; by which it is enacted, That the Keepers of the King's Bench and Fleet Prisons, suffering prisoners to go at large, or out of the Rules, without *Habeas Corpus*

Corpus

EASTER TERM, 29 Car. II. 1677.

[That no Bail be put in upon any *Habeas Corpus* before the Writ be returned, and the Attorney putting in Bail to pay the Fees for filing the Bail-pieces.—The Judges' Clerks after every Term to give the Secondary a Note of all Bails put in, and pay for filing the Bail-pieces.]

IT IS ORDERED by the Court, That no Bail be put in upon Writs of *Habeas Corpus* before such Writs be returned; and that every Attorney of this court, who

Corpus or Rule of Court, shall be guilty of an escape; and by the 6th Sec. the Marshal, &c. has a right to re-take a Prisoner on fresh pursuit; but it is provided, that he shall not give that fact in evidence, unless he plead it specially, and verify the truth of his plea by Affidavit; and if the Keeper of any Prison refuse, after one day's notice, to shew any Prisoner in execution to his Creditor or Attorney, it shall be deemed an escape. If a Prisoner, having the Rules of the King's Bench Prison, escape without the Marshal's knowledge, such escape is a negligent and not a voluntary escape; the Marshal may therefore plead a Reception, which he may do if the Prisoner voluntarily return without force. *Bonafous v. Walker*, 2 T. Rep. B. R. 126.

shall

shall put in any Special Bail before any Justice of this court, at the time of putting in the same, do deposit in the hands of the Justice's Clerk before whom such Bail shall be so put in, the Fee due for filing the Bail; that is to say, for every Bail upon a Writ of *Habeas Corpus*, 4s. 10d., and for every Bail upon a Writ of *Cepi Corpus*, 2s. 6d.; and that the Justice's Clerk in whose hands that Fee shall be so left, shall, within six days next after the end of each Term, give a Note in writing to the Secondary of this court, of all Bails of the Vacation and Term foregoing so put in, together with the names of the Attornies who put in those Bails, and pay the said Secondary the Fee aforesaid, received by them for such Bails in manner aforesaid.

HILARY TERM, 30 *Car.* II. 1677.

[That the Master inquire what Writs belong to the Filacer to sign.]

IT IS ORDERED, That it be referred to Mr. *Livesay* to inquire what Writs ought to be signed by the Filacer of this court before such Writs be sealed *.

HILARY TERM, 31 *Car.* II. 1678.

[That Original Writs which ought to be signed by the Filacer be signed by him before sealing them; and that, as to other Writs, the Master inquire what ones belong to the Filacer to sign.]

IT IS ORDERED, That Original Writs, which by Law ought to be signed by the Filacer of this court, shall be signed by the said Filacer before such Writs be sealed by the Officer of this court, and that other

* Vide Easter, 31 *Car.* II.

130 RULES AND ORDERS OF THE

Writs in question be referred to Mr. *Livesay* to examine and certify to the Court *.

EASTER TERM, 31 Car. II. 1679.

[That all Writs and Process upon Original Writs before Appearance be signed by the Filacer.]

IT IS ORDERED, That all Writs and Process whatsoever, issuing upon Original Writs before the appearance of the Defendant, ought to be signed by the Filacer of this court, according to the course of this court †.

* Vide the following Rules, East. 31 Car. II., and Trin. 1 Jac. II.

† This and the two preceding Rules, and also the Rule of Trin. 1 Jac. II., appear to have originated from a claim of Mr. *Trye* a Filacer, to a right in all Actions commenced by Original Writ, equal to that of the Chief Clerk in Actions by Bill. Vide *Trye's Jus Filacerii*.

TRINITY TERM, 31 *Car. II.* 1679.

[Time of sealing Records of *Nisi Prius*.]

IT IS ORDERED, That no Record of *Nisi Prius*, for the trial of an Issue at the Affizes, shall be sealed after the end of three weeks next after the end of the Term*.

EASTER TERM, 32 *Car. II.* 1680.

[That one or more Persons be permitted to attend on behalf of the Earl of *Suffolk* to view the sealing of Writs.]

IT IS ORDERED, That the Officers of this court who have the custody of the Seal, permit one or more Persons to attend at the time of sealing the Writs of

* Vide Trin. 1 *Jac. II.*, Mich. 5 *Ann.*, Trin. 10 & 11 *G. II.*

The practice now is to seal Records at any time when presented; but if the time for sealing directed by this Rule have elapsed, the Attorney pays a Fee of 2s. for the Chief Justice's Order to permit the Record to be sealed, under the Rule of the 15 & 16 *Car. II.* 1663.

532 RULES AND ORDERS OF THE

the said court, and fix (on the behalf of the Earl of *Suffolk*) a Stamp or Mark upon every Writ so sealed, or to be sealed, until the Court here shall otherwise order, so that it be done without charge to any of his Majesty's subjects, or hindrance to the Officers aforesaid *.

EASTER TERM, 33 *Car.* II. 1681.

[The Rule of *Michaelmas* last discharged, and a Rule made for Delivery of Books to the Judges in matters of Error.]

IT IS ORDERED, That the Rule made in *Michaelmas* Term last past, for the delivery of Copies of Error, and the Records thereupon, to the Justices of the Common Bench and Barons of the Exchequer, be discharged; and that, for the future, no Copy of Error, and Record thereupon, be delivered to the said Justices and Barons, before the Attorney for the Plaintiff upon the Writ of Error shall give ten days notice to the Clerk of the Errors in the Exchequer

* Vide RULE, Hil. 25 *Car.* II.

Chamber,

Chamber, that the Error assigned in the Record is to be argued, before the said Justices and Barons for both Parties; and that the Attorney for the Plaintiff shall deliver four copies to the Justices of the Common Pleas, and the Attorney for the Defendant shall deliver four other copies to the Barons of the Exchequer, four days before the hearing the Cause.

MICHAELMAS TERM, 33 *Car.* II. 1681.

[A former Rule discharged; and ordered, that in all Causes of Ejectment, a *Latitat* be sued out, and Common Bail filed for the casual Ejector.]

IT IS ORDERED by the Court, That the Rule of this court made for filing Bail be observed, upon the penalty of the forfeitures in the said Rule mentioned: AND IT IS FURTHER ORDERED, That all the Attornies of this court who shall deliver, or cause to be delivered, any Declaration in a Plea of Trespass and Ejectment, to any tenant in possession of any

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lands

134 RULES AND ORDERS OF THE

lands or tenements, shall sue out a Writ of *Latitat* against the casual Ejector, and file Common Bail for him before they sign Judgment against the casual Ejector in any such Action*.

EASTER TERM, 36 *Car.* II. 1684.

[When Writs of Error shall be delivered to the Clerk of the Errors, and in what cases they shall not stay Execution.]

IT IS ORDERED, That all Writs of Error returnable before the Justices of the Common Bench and Barons of the Exchequer Chamber, shall, without delay, be delivered to the Clerk of the Errors for the time being; and that no person shall be bound to forbear suing forth of Execution, on pretence of any such Writ of Error, before the Writ shall be delivered to the Clerk of the Errors; and in cases where Special Bail be required, unless the Plain-

* Vide Mich. 16 *Car.* II., Trin. 14 *Car.* II., and the notes thereto.

tiff upon such Writ of Error shall, within four days after the delivery thereof, put in Bail according to Law, the Defendant may proceed to Execution notwithstanding such Writ*.

* Vide Easter, 16 Car. II., R. 2., and Mich. 5 W. & M.

COURT OF KING'S BENCH

TEMPORARY JACOB SECOND

Trinity Term, 1 Jac. II. 1685.

That no Record of this Court be sealed before the Pleas be entered. To whom Rolls shall be delivered, and who shall enter the Pleas, &c.

It is ordered, That no Record of this Court be sealed by any Officer of the Court, after the 1st of July next, till the Pleas be entered, and that such upon the Pleas be entered; and that such shall be shown to the Secretary of the Court.

COURT OF KING'S BENCH,
TEMPORE JACOBI SECUNDI.

TRINITY TERM, 1 Jac. II. 1685.

[That no Record of *Nisi Prius* be sealed before the Pleadings be entered.—To whom Rolls shall be delivered, and who shall enrol Deeds, Pleadings, &c.]

IT IS ORDERED, That no Record of *Nisi Prius* be sealed by any Officer of this court, after the 12th of July next, till the issue, or part thereof, be entered upon the Number Roll; and that such issue be shewn to the Secondary of this court,

court, and be by him signed and licensed to be sealed; and that no Rolls numbered be delivered to any person, unless to the Clerks of the Chief Clerk, and not to any other Attorney or other Filacer; and that no Clerk, Attorney, or Filacer shall hereafter inrol any Indentures, Writing, Writ of Error, Issue, or Demurrer in Law, upon any Filacer's Roll*.

EASTER TERM, 2 Jac. II. 1686.

[When Books shall be delivered to the Judges, on arguing Demurrers, &c.]

IT IS ORDERED, That upon reading any Record here in court upon a Demurrer in Law, Special Verdict, or Writ of Error, and thereupon a day be given to hear the Counsel of both parties, the Books shall be delivered to the Justices of this court by the Attornies of both parties,

* Vide RULES, Hil. 31 Car. II., East. 31 Car. II.
by

138 RULES AND ORDERS OF THE

by the space of four days before the day so by the Court appointed; and that the exceptions which shall be insisted on upon the argument be marked in the margin of those Books*.

HILARY TERM, 2 Jac. II. 1686.

[In what Cases Special Bail shall be put in upon
Actions removed from Inferior Courts.]

IT IS ORDERED, That every Defendant, not being an executor or administrator, who shall sue out any Writ of *Habeas Corpus* to remove any suit out of any Inferior Court, shall put in Special Bail in all Actions whatsoever, (Actions for scandalous words and small assaults only. ex-

* Vide RULES, Mich. 17 Car. I., East. 18 Car. II.

The practice now is, to deliver the Books only two days before the day of argument; and the latter part of this Rule, requiring the exceptions intended to be insisted upon in cases of Demurrer, is, since the Statute 4 & 5 Ann. c. 16., which requires such exceptions to be specially set forth in the Pleadings, rendered unnecessary.

cepted,) unless one of the Justices of this court shall otherwise order*.

HILARY TERM, 3 & 4 Jac. II. 1687.

RULE I.

[None to be admitted *in forma Pauperis* but in Court.]

IT IS ORDERED, That none be admitted *in forma Pauperis* out of court†.

* Vide RULES, 10 W. III., East. 29 Car. II., Trin. 8 W. III., R. 3., Mich. 1651.

— By Statute 19 G. III. c. 70, no person shall be held to Special Bail by Process issuing out of any Inferior Court, unless the cause of action amount to 10*l.*; and if it be less than that sum, and the Defendant remove it into a Superior Court, he shall put in Special Bail to pay the debt and costs, if Judgment pass against him.

† But now if a Pauper make affidavit that he is not worth 5*l.*, and annex the same to a petition to the Chief Justice, with Counsel's approbation of the Pauper's case, he may be admitted out of court.

140 RULES AND ORDERS OF THE

Same Term.

R U L E II.

[Disturbance of the Court.]

IT IS ORDERED, That no Carts or Drays
pass in *King-Street, Westminster*, in
Term time, between the hours of eight
and two.

EASTER TERM, 4 *Jac.* II. 1688.

[Warrants of Attorney to be entered on the
Roll.]

“ **B**ECAUSE it appeareth to the Court,
“ that, by reason of the negligence
“ of the Clerks and Attornies in not en-
“ tering and filing Warrants of Attorney
“ of Record, divers Judgments are re-
“ versed, to the grievous damage of their
“ clients,” IT IS ORDERED, That every
Clerk and Attorney of this court who here-
after shall enter any Cause of Record, shall
IO enter,

enter, in the beginning of every cause so entered, the Warrants of Attorney for the Plaintiff and Defendant in such causes, otherwise their Rolls shall not be filed or received*.

* Vide RULE, Mich. 5 Ann.

THE COURT OF KING'S BENCH

of which view is given in the margin

RULES AND ORDERS

of the Court of King's Bench

OF THE

COURT OF KING'S BENCH,

*TEMPORE WILLIELMI ET MARIE
REGIS ET REGINÆ.*

HILARY TERM, 1 *W. & M.* 1689.

[That Bail be filed for the Defendant upon
entering Judgment by Warrant of Attor-
ney.]

IT IS ORDERED by the Court, That for
every Judgment acknowledged by
Warrant of Attorney, Bail shall be filed
for the Defendant to warrant such Judg-
ment; or, in default thereof, the Attorney
who ought to file the said Bail, shall for-
feit and pay to the court box ten shillings
for every such Bail not filed; and for
every

every other Common Bail which ought to be filed, and is not, the Attorney for the Defendant shall forfeit and pay to the box of the court ten shillings; and the same respective Attornies shall be punished as to the Justices of the court shall seem meet*.

MICH. TERM, 2 W. & M. 1690.

[That no Attorney receive or deliver any Plea which ought to be filed with the Clerk of the Papers.]

IT IS ORDERED by the Court in full court, That no Attorney or Clerk attending here in court, presume to deliver to any other Attorney or Clerk attending here in court, or to any other person, or receive from any Attorney or Clerk attending here in court, or any other person, any Special Plea which ought to be filed in the Office of the Clerk of the Papers, or a Copy of such Plea, before that such Plea shall be put into the Office of the Clerk of the

* Vide Trin. 4 W. & M., R. 2.

Papers;

Papers; and that such Copy, after such Plea filed, shall be made by the Clerk attending in the aforesaid Office of the Clerk of the Papers, and signed under the hand of one of the Clerks attending there, under the penalty that every Attorney and Clerk attending here in court shall forfeit, for his first offence so committed, ten shillings, to be paid to the box for the use of the poor; and for his second offence so committed, twenty shillings, to be likewise paid to the box for the use of the poor; and for his third offence so committed, that such Attorney or Clerk be expelled this court, according to two former Rules peremptorily and generally in the like case made by the Court in full court; to wit, Trin. 2 Jac. I. and Trin. 16 Car. II*.

* This and the preceding Rules of Trin. 2 Jac. I. and Trin. 16 Car. II. are perfectly alike. The practice directed by these Rules is, that all Special Pleas and Special Demurrers be filed with the Clerk of the Papers, and not delivered over to the adverse Attorney; and by Rule, Easter, 18 Car. II. It is ordered, That such Pleas and Demurrers be signed by Counsel before they shall be received by the Clerk of the Papers. By Rule, Trin. 12 W. 3. it appears, that all general Demurrers after any Special Plea shall also be filed with the Clerk of the Papers; and although the Rule affix a penalty upon a contrary practice, and do not specifically render such Pleadings a nullity, yet, as they direct

TRIN. TERM, 4 W. & M. 1692.

RULE I.

[Although a Defendant appear voluntarily,
yet a Writ must be sued out.]

IT IS ORDERED, That if any Defendant do voluntarily appear, at the suit of any Plaintiff in any Action whatsoever here in court

direct the way of pleading any transgression, is an irregularity, and the adverse party is not bound to take notice of it, but may sign his Judgment.

Attornies may make up the Issue or Demurrer-book, in the following cases, viz. Where the Defendant pleads the *General Issue* to the Declaration; *Not Guilty to a New Assignment*; the Bar of *San Frank Tenement*; *Comperuit ad Diem* to a Bail Bond; *Nul tiel Record* to an Action of Debt on a Judgment; in covenant, where the Defendant in his Bar concludes to the Country; every *Special Non est factum*; every *San Assault Demesne*; and all Issues and Demurrers upon *Writs of Error*, *Scire Facias*, and *Audita Querela*, and all *Repleaders* and other things formally entered of Record. In all other cases, both by Bill and Original, the Pleadings must be filed with the Clerk of the Papers, of whom you bespeak copies; and when Issue is joined, he makes up the Paper or Demurrer Book; and per Mr. Secondary Livesay,

court prosecuted, such Appearance shall be held of no force or effect, unless the Attorney for such Plaintiff sue out, within fourteen days after such Appearance, a Writ of *Latitat*, or Bill of *Middlesex*, where the Defendant resides in *Middlesex*.

and the ancient clerks in court in the year 1669, it was agreed as the practice of the court, and has ever since continued, that in all Special Pleadings where the Plaintiff takes Issue upon the Defendant's Pleading, or traverseth the same, or demurreth so as the Defendant is not thereby let in to alledge any new matter, the Plaintiff may make up the Paper-book without giving a rule to rejoin, &c.; and if the Defendant do not, within four days after the Paper-book delivered to him, (the same being delivered in time,) return the same to the Plaintiff's Attorney, and join Issue, or demur, or else plead the General Issue, Judgment may be entered by default; in which case the entry of the Judgment will be as for want of a Plea, it not being necessary to add the Pleadings of the Defendant, and take Judgment for his default specifically, the default itself being an abandonment of his antecedent Pleadings. *Petrie v. Fitzroy*, 5 T. Rep. B. R. 152.

Same Term.

RULE II.

[What shall be paid by Defendant's to Plaintiff's
Attorney upon delivering Declarations.]

“**W**HEREAS Clerks and Attornies of
 “ this court, notwithstanding the
 “ several rules and penalties for the true
 “ filing of Common Bails, do yet ne-
 “ glect to file such Common Bails, to
 “ the great danger of the Plaintiffs,
 “ and detriment to the Chief Clerk;”
 for remedy whereof, It is ORDERED
 by the Court, That, after the end of this
 present Term, every Clerk and Attorney
 of this court, who shall be an Attorney
 for the Defendant, shall pay to the Plain-
 tiff's Attorney, upon joining of every Issue,
 one shilling and sixpence for the Common
 Bail, unless the said Attorney for the De-
 fendant shall make it appear to the Plain-
 tiff's Attorney that the Common or Special
 Bail is filed: AND IT IS FURTHER OR-
 DERED, That every Clerk for the Plaintiff,
 on his account for his entries, shall pay
 to the Secondary of this court the one
 L 2 shilling

148 RULES AND ORDERS OF THE

shilling and sixpence so by him received ;
and that every Clerk and Attorney who
shall act contrary to this rule in any be-
half, shall respectively forfeit ten shillings
for every such default, to be paid to the
box of this court : AND IT IS FURTHER
ORDERED, That all Clerks and Attornies
for the Plaintiff, upon signing Judgment by
default, or on *non sum informatus*, shall
pay to the Secondary of this court one
shilling and sixpence for the Common
Bail, unless it have been before filed, and
the said one shilling and sixpence shall be
allowed the Plaintiff in his costs *.

Same Term.

RULE III.

[That the Officers of the Seal have liberty to
inspect all Writs issued.]

“ UPON complaint of the Officers ap-
pointed for keeping the Seal of
this court, that several Writs have un-

* Vide RULE, 22 Geo. III., the several Rules there
referred to, and the Notes added.

“ duly

"duly issued out of this court without
 "sealing them by the aforesaid Officers, in
 "fraud of the said seal," IT IS ORDERED
 by the Court, That the several Under-Sheriffs of the several counties of this kingdom of *England*, permit those Officers to search and inspect all Writs issued out of this court and delivered to them, remaining in their respective custodies, without any fee to be thereupon paid.

HILARY TERM, 5 *W. & M.* 1693.

[Prisoners committed upon *Habeas Corpus* to remain in custody two days, although another *Habeas Corpus* be delivered to the Marshal.]

IT IS ORDERED, That every Prisoner who shall be committed to the custody of the Marshal of this court, by virtue of any Writ of *Habeas Corpus ad respondendum*, or *ad faciendum et recipiendum*, shall remain in actual custody of the said Marshal, for the space of two days next after such commitment, notwithstanding any other Writ

936 RULES AND ORDERS OF THE

of *Habeas Corpus ad respondendum*, or *ad faciendum*, or *ad faciendum et recipiendum* issued out of any other court to the said Marshal delivered and allowed.

EASTER, 5 W. & M. 1693.

RULE I.

[When Rolls shall be brought in.]

IT IS ORDERED by the Court, (respect being had to a certain Act of Parliament lately made for the docketing of Judgments,) That all the Clerks of the Chief Clerks of this court shall bring into the Office of the said Chief Clerks, their afore-said Rolls of the Term of Easter, at or before the Tuesday next before the first day of Trinity Term; and that the said Clerks shall bring into the Office afore-said, their Rolls of the several Terms of Trinity, Michaelmas, and Hilary, by the space of one week at least before the Effoin-day of every subsequent Term; and that no Roll shall be received or filed after the end of the

the second Term, without a Rule of this court in that behalf obtained*.

Same Term.

RULE II.

[Rules for delivering Declarations against Prisoners.]

Rules to be observed in the Court of our Lord and Lady the King and Queen, before the King and Queen themselves, in Proceedings upon Declarations delivered to Prisoners in Gaol.

[No Declaration to be delivered before the Return of the Writ.]

IT IS ORDERED as followeth,

THAT no Copy of a Declaration be delivered to a Prisoner in custody before the day of the Return of the Process upon which the Defendant was taken or charged in custody.

* Vide Stat. 4 & 5 W. & M. c. 20.—7 & 8 W. III. c. 36. RULES, East. 9 W. III. Michaelmas, 9 W. III. Trinity, 10 W. III. Easter, 1657. Michaelmas, 5 Ann. RULE I.

152 RULES AND ORDERS OF THE

[No Rule to appear and plead till Affidavit of the delivery of the Declaration be made.— Which shall be produced on signing Judgment.]

That no Rule be given that the Defendant in custody appear and plead to any Declaration against him, till an Affidavit be filed with the Clerk of the Rules, of the delivery of a Copy of such Declaration, and the time when, and the person to whom the said Copy was delivered; and that the Defendant was arrested or charged in custody by Process from this court, returnable before the delivery of such Copy; and that the time of filing such Affidavit be entered upon the said Affidavit by the Clerk of the Rules, and that a Copy of the Affidavit be produced before the Prothonotary or Secondary before signing of Judgment.

[When Judgment may be signed.]

That if a Copy of the Declaration be delivered against such Defendants before the month of Easter or the Morrow of All Souls, and Affidavit thereof be made and filed,

filed, and Defendant do not appear thereto within ten days next after the end of Easter and Michaelmas Terms respectively, Judgment may be entered against him if Rules have been given; but if he do appear before the end of ten days after the Term, he shall have liberty of imparling until the next Term; unless the Action be laid in *London* or *Middlesex*, and the Defendant be in Prison within forty miles of *London* or *Westminster*, then, though he do appear before the expiration of ten days after the end of the Term, he shall plead two days before the Effoin-day of the next Term; and in default thereof, Rules having been given, Judgment may be entered against him as aforesaid.

That if a Copy of the Declaration be delivered against such Defendant on or before the month of Easter in Easter Term, or the Morrow of All Souls in Michaelmas Term, or in Hilary or Trinity Terms, and thereupon the Plaintiff give a Rule to appear and plead, then, if the Defendant appear within two days before the Effoin-day of the next Term, he shall have liberty of imparling until the said next Term; but if he do not appear within that time, Judgment may be given against him.

That

That if a Writ be returnable in any Term, and a copy of the Declaration be delivered before the Effoin-day of the next Term, the Plaintiff in such next Term may give a Rule to appear and plead; and if the Defendant do not appear and plead upon the expiration of the Rules, Judgment shall be given against him.

[When the Defendant shall become superfluous.]

That if the Declaration be not filed before the expiration of the next Term after the Writ or Process by which he was taken or charged in custody be returnable, and Affidavit made and filed in manner aforesaid before the end of twenty days next after such Term, such Prisoner shall be discharged upon Common Bail, to be signed by one of the Judges of this court.

[Gaolers to deliver Declarations to their Prisoners.]

That if any Gaoler, or Keeper of a Prisoner, who hath received a copy of a Declaration against any Prisoner in his custody, shall conceal the same, and not deliver it forthwith unto such Prisoner,

an attachment shall be issued against him.

JOHN HOLT.

WILLIAM DOLBEN.

WILLIAM GREGORY.

GILES EYRE.

MICHAELMAS TERM, 5 W. & M.,
1693.

[Notice of Bail in Error to be given, which, if not excepted to in twenty days, shall be allowed.]

IT IS ORDERED by the Court, That every Attorney of this court, who hath sued out any Writ of Error, to reverse any Judgment obtained in this court, in which Special Bail ought to be put in, after the putting in of such Special Bail, shall give notice thereof, without delay, to the Defendant in the Writ of Error, or to his Attorney; and that if the said Defendant shall not except to the said Bail, for insufficiency thereof, within twenty days next after notice thereof given to him

156 RULES AND ORDERS OF THE

him or his Attorney, then such recognizance shall be allowed*.

* By Statute 3 Jac. I. c. 8., no execution shall be stayed or delayed upon or by any Writ of Error, or *Superfedeas* thereupon, to be sued for the reversing of any Judgment given in any action or bill of debt, upon any single bond for debt, or upon any obligation for the payment of money only, or upon any action or bill of debt for rent, or upon any contract sued in any of his Highness's Courts of Record at *Westminster*, or in the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in the courts of Great Session in any of the twelve shires of *Wales*, unless such person or persons, in whose name or names such Writ of Error shall be brought, with two sufficient sureties, such as the Court wherein such Judgment is or shall be given shall allow of, shall, before such stay made or *Superfedeas* to be awarded, be bound unto the party for whom such Judgment is given, by recognizance, to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former Judgment, to prosecute the said Writ of Error with effect; and also to satisfy and pay, (if the Judgment be affirmed,) all and singular the debts, damages, and costs adjudged upon the former Judgment, and all costs and damages to be also awarded upon the delay of execution. And, by Stat. 13 Car. II. c. 2., the preceding Statute of 3 Jac. I., requiring Bail upon Writs of Error, is extended, *after verdict*, to actions of debt, grounded upon the Statute 2 Ed. VI. c. 13., for not setting forth tithes, actions upon the case upon any promise for payment of money, actions of trover, actions of covenant, detinue, and trespass. And § 10. gives double costs

costs to the defendant in error, by delay of execution, if judgment be affirmed. It is provided, § 11., that this act do not extend to actions popular, or upon penal Statutes, indictments, &c. except the Statute 2 Ed. VI. c. 13.

By Statute 16 & 17 Car. II. c. 8., the Statute of 3 Jac. I., respecting Bail upon Writs of Error, is further extended, after verdict, to all personal Actions whatsoever; and also to Writs of Dower, and Actions of Ejectment, wherein Bail shall be acknowledged, in such reasonable sum as the Court to which such Writ of Error shall be directed shall think fit; but the Statute requires only the recognizance of the Plaintiff in Error, in Writs of Dower and Ejectment; and there is a proviso, that the act shall not extend to Writs of Error brought by executors or administrators, or to any Action popular, or upon a penal Statute, except the Statute of the 2 Ed. VI., respecting Tithes, nor to Indictments, &c.

In Ejectment, (and we presume also in Writs of Dower,) the Rule is, for the recognizance to be in double the annual value of the premises recovered. 4 Burr. 2501. Barnes, 103.

On Error in Ejectment, the Plaintiff in Error, being in a remote part of the kingdom, found two sufficient men to be Bail, and they accordingly entered into a recognizance. The Court held, that the intent of the Statute being to secure the Defendant in Error, was in this case fully complied with; for this Bail was better than the Plaintiff's own recognizance. Barnes v. Bulver, Carth. 121. Barnes, 103. 78. 75.

If Judgment be against an executor or administrator *de bonis Propriis*, and he bring a Writ of Error, he must put in Bail in all cases wherein Bail is required by

158 RULES AND ORDERS OF THE

by the Statutes, but not if Judgment be *de bonis Testatoris*. 1 Lev. 245. 1 Sid. 368. 2 Keb. 295. 371.

By the Rules of Easter, 16 Car. II. R. 21, and Easter, 36 Car. II., unless the Plaintiff in Error put in Bail, (if Bail ought to be put in,) within four days next after the allowance of the Writ of Error, Execution may issue notwithstanding such Writ of Error. The four days allowed by these Rules are reckoned, exclusive of the day of the allowance of the Writ of Error; and if (as is frequently the case) the Writ of Error be allowed before final Judgment, whereby the *quantum* of the Judgment (which depends upon the allowance of costs) not being ascertained, the Plaintiff in Error cannot put in Bail in four days from the allowance of the Writ, not knowing the sum to which the Bail must acknowledge, he shall have four clear days next after signing final Judgment; for the allowance has (if final Judgment be not already signed) relation to the day of signing such Judgment. The service of the allowance is only material to bring the party into contempt, if he afterwards sue forth Execution; for the allowance of the Writ is of itself a *Supersedeas*; and the Courts have gone so far, that if a Writ of Error be sued out, and the Plaintiff do not sign Judgment till after the return of the Writ, in order to avoid the effect of it, and then sue out Execution to set the Execution aside. If the Writ of Error be allowed upon *Monday*, the Defendant in Error cannot sue forth Execution, for want of Bail being put in, until the following *Saturday*. *Jacques v. Nixon*, 1 T. Rep. B. R. 279. *Doe Ex. Dem. Clay and another v. Bracebridge*, there cited. *Bennet v. Nichols*, 4 T. Rep. B. R. 121. 1 Burr. 340.

If a Defendant bring a Writ of Error, and the Plaintiff bring an action upon the Judgment, and recover,

cover, he cannot sue out Execution upon his second Judgment till the Writ of Error be determined; for the Court will not permit that to be done indirectly, which cannot be done directly. *Benwell v. Black*, 3 T. Rep. 643.

If a Plaintiff, in order to proceed against Bail, sue out a *Ca. Sa.*, and lodge it in the Sheriff's office to be returned, after which, and before the return of the *Ca. Sa.*, a Writ of Error be allowed, the Plaintiff cannot proceed to fix the Bail upon such *Ca. Sa.*, although the Sheriff return *non est inventus* thereupon, for after the allowance of the Writ of Error the Sheriff could not have taken the Defendant upon the *Ca. Sa.* 2 Stra. 1102. *Perry v. Campbell and another*, 3 T. Rep. 390.

The Court will not set aside an Execution sued out before, but executed after a Writ of Error brought, and within the four days allowed for putting in Bail, if the Plaintiff in Error omit putting in Bail in due time; but if the Writ of Error be regularly followed up, the Execution will be set aside. *Lane et al. v. Bacchus*, 2 T. Rep. 44.

If an Action be brought upon a Judgment pending a Writ of Error, and the Plaintiff in Error apply to the Court to stay the Proceedings in the second Action, the following distinction is observed by the Court, *viz.* That where the Action is brought upon a Judgment of the Common Pleas, they will not stay the Proceedings pending the Writ of Error, without the Defendant give Judgment in the second Action; but if the Writ of Error be upon a Judgment of this Court, these Terms make no part of the Rule; because, in general, Actions on Judgments are vexatious, and the Plaintiff might have his Execution on the first Judgment. *Per Bull. Jus., Bates, qui tam v. Lockwood*, 1 T. Rep. B. R. 637.

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The Defendant in such second Action cannot apply to stay Proceedings pending a Writ of Error, until he have put in Bail to the Action. *Smith v. Shepherd*, 5 T. Rep. 9.

If the Writ of Error appear to have been brought merely for delay, the Court will not stay Proceedings; in an Action upon the Judgment such applications are not merely matters of course, but in the discretion of the Court. *Entwistle et al. v. Shepherd et. al.*, 2 T. Rep. 78. and the cases there cited, *tamen quere*. *Vide Christie v. Richardson, contra*, 3 T. Rep. 78.

If a Defendant in Error become Bankrupt, his assignees cannot make themselves parties to the Record in any intermediate stage of the Proceedings which must be carried on in the Bankrupt's name until Judgment, though an interlocutory Judgment is sufficient for that purpose, and it must then be done immediately after such Judgment. *Kretchman v. Beyer*, 1 T. Rep. 463.

In general the Rule is, that a Writ of Error, allowed and served, operates as a *Superfedeas* to an Execution, and the Court will stay the Proceedings of course; but that is upon the supposition that the party may have some error to complain of, which it is right should be examined into before Execution be awarded; and therefore if it appear plainly and unequivocally to the Court, that the Writ of Error is brought merely for delay, that reason does not hold, and the Court will not stay Execution. How it shall be made appear that the Writ of Error is brought merely for delay is matter of evidence, in each case, in general, the Court requires it to be proved by an acknowledgment from the party who sues out the Writ of Error, and they have held the *belief* of the *other* party insufficient. If a Plaintiff being nonsuit, bring a Writ of
of

of Error, the Court will not stay execution; for if the Record were manifestly erroneous, he who has made default by suffering a nonsuit can never afterwards have a Judgment in his favour; *Kempland v. Macauley* and another, 4 T. Rep. 436. *Box v. Bennet*, H. Bla. Rep. C. B. 432. *Christie v. Richardson*, 3 T. Rep. B. R. 78. The Court refused to set aside execution, it appearing by the Plaintiff's Affidavit, that the Defendant and his Attorney had declared they would delay the Plaintiff as much as possible, by bringing a Writ of Error, if he did not comply with certain terms proposed; *Poole v. Charnock*, 3 T. Rep. B. R. 79. So where the Defendant's Attorney had told the Plaintiff that he must delay him of the debt and costs as long as he could, as his client was already considerably in arrear to him; *Law v. Smith*, Mich. 30 G. III. B. R. cited in *Kempland v. Macauley*. So upon a Declaration of one of the bail, that the Writ of Error was brought for delay; *Evans v. Gilbert*, Tr. 31 G. III., also cited in *Kempland v. Macauley*. So in an action wherein the Plaintiff had obtained Judgment for want of a Plea; a Writ of Error being brought, the Court refused to set the execution aside, it appearing the Defendant's Attorney had not taken the Declaration out of the Office, and could therefore know of no error in the proceedings; *Read v. Oliver*, C. B. East. 32 G. III. So if the Writ of Error be brought against good faith, as where the Plaintiff's Attorney had agreed to give the Defendant time to pay the debt, provided no delay was intended, and gave him time accordingly, after which the Defendant brought a Writ of Error, the Court refused to set aside the execution; but inasmuch as the Writ of Error was a *Superfedeas*, and the Plaintiff ought regularly to have moved to quash it, the Rule was discharged without costs. *Cates v. West*, 2 T. Rep. 183.

HILARY TERM, 6 *W. & M.* 1693.

[That Fines due to the Crown be collected as heretofore.]

IT IS ORDERED, That all Fines due to our Lord the King and our Lady the Queen, in the court of our said Lord the King and Lady the Queen, for or upon all Actions for Debt, and Actions for Damages prosecuted in the court aforesaid, be received and collected as heretofore*.

* We cannot here avoid noticing the difference in the practice of the King's Bench and Common Pleas, when the suit is commenced by original in the former, as it always is in the latter court, unless where privilege interferes; and, in order to explain the difference alluded to, it will be first necessary to observe, that the *Capias*, being against the person of the Defendant, was formerly executed according to the mandate of the Writ, by taking his body into custody, however small or minute the Plaintiff's demand for which it issued. This practice continued down to the year 1661, when, being found very oppressive, the Stat. of 13 Car. II. Stat. 2. § 2. was made; which enacts, That no person who shall be arrested by colour of any Process out of the King's Bench or Common Pleas, in which Process the cause of Action is not expressed particularly, and for which the Defendant is bailable by the Stat.

TRINITY TERM, 8 W. III. 1696.

R U L E I.

[No *Alias Sci. Fac.* to issue until the first shall be returnable.]

IT IS ORDERED, That upon issuing any Writ of *Scire Facias* upon any Suit here in court depending, no Writ of *Alias Scire Facias*

Stat. 23 H. VI. c. 10., shall be compelled to give security for his appearance, in any penalty exceeding 40*l.* " This Statute," says Mr. Justice Blackstone, in his Commentaries, vol. iii. p. 287. " without any " such intention in the makers, had like to have ousted " the King's Bench of all its jurisdiction over civil " injuries without force; for as the Bill of *Middlesex* was framed only for Actions of Trespafs, a " Defendant could not be arrested and held to bail " thereupon for breaches of civil contracts. But to " remedy this inconvenience, the Officers of the " King's Bench devised a method of adding what is " called a clause of *ac etiam* to the usual complaint of " Trespafs; the Bill of *Middlesex*, commanding the " Defendant to be brought in to answer the Plaintiff " of a Plea of Trespafs, *and also* to a Bill of Debt, " the complaint of Trespafs giving cognizance to " the Court, and that of Debt authorizing the " arrest. In imitation of which, Lord Chief Justice " North, a few years afterwards, in order to save

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" the

Facias shall thereupon issue until the first Writ of *Scire Facias* be returnable. And if

“ the suitors of his court the trouble and expence of
 “ suing out Special Originals, directed, That in the
 “ Common Pleas, besides the usual complaint of
 “ breaking the Plaintiff’s close, a clause of *ac etiam*
 “ might be also added to the Writ of *Capias*, contain-
 “ ing the true cause of Action.” But this practice of
 suing by a Common *Capias*, grounded upon a supposed
 Trespass, (whereupon no Fine is payable to the Crown,) with the addition of an *ac etiam* of the true cause of Action, was never adopted by the King’s Bench; which, had it been, might have produced a great influx of business to that court; as suitors would the rather have been induced to bring their Actions in a court, from whence a Writ of Error only lay to the House of Lords. The Writ of *Capias*, issuing by Original out of this court, is called a Special *Capias*, as contradistinguished from the Common *Capias* of the Common Pleas, and contains the true cause of Action; and upon the suing forth of this Writ, a Fine is payable to the Crown in the following proportions, except the Action be brought for a forceable injury; whereupon, until the Stat. 5 & 6 W. & M. c. 12., the Crown was entitled, instead thereof, to a *Capiatur* Fine, which was measured, after judgment, by the amount of the damages.

	£.	s.	d.
Where the damages laid exceed 40 <i>l.</i> , and are under 66 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> or 100 Marks,	0	6	8
From 66 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 100 <i>l.</i>	0	10	0
From 100 <i>l.</i> to 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i>	0	13	4
From			

if any Writ of *Alias Scire Facias* shall be issued contrary to this Rule, such *Alias Scire Facias* shall be void*.

Same Term.

R U L E II.

IT IS ORDERED, That upon every reference by the Court here made to the Secondary of this court, to return any Jury, or to name forty-eight sufficient Jurors to try any Issue here at Bar, in the presence of the Attornies of both parties; if the Attorney of one side shall make default to appear before the said Secondary at the time by him appointed for the naming of the Jurors aforesaid, or to strike out

	£.	s.	d.
From 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> to 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i>	0	16	8
From 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 <i>l.</i>	-	1	0
And for every 100 <i>l.</i> more,	-	0	10
And upon <i>Recordari, Pene, Accedas ad Curiam,</i> (except <i>de Averiis et Catallis,</i>) <i>Attinet</i> Con- spiracy, False Judgment, and <i>Dedimus potes-</i> <i>tatum,</i>	-	0	6
			8

* Vide Easter, 5 G. II. R. 3.

twelve of either part ; in such case the said Secondary shall name the Jury aforesaid in the absence of the Attorney who shall make default thereupon, and shall strike out of the said forty-eight Jurors, twelve on behalf of each party, and the rest of the Jurors shall be returned by the Sheriff to try the Issue *.

Same Term.

R U L E III.

[How Bail shall be taken by Commissioners.]

Orders to be observed by Commissioners for taking Special Bail in the Country, upon Actions and Suits depending, or to be depending, in his Majesty's Court of King's Bench.

First, **I**T IS ORDERED, That the Bail Piece be fairly drawn and ingrossed on Parchment in the form following :

* By Stat. 24 G. II. c. 18. the party applying for a Special Jury shall pay the expence of striking such Jury, and all charges occasioned by means thereof, without being allowed for the same upon taxation of Costs, unless the Judge certify the Cause to be of that nature as to be proper to be tried by a Special Jury.

Middlesex,

Middlesex, ff. *John Doe* of *Islington* in the County of *Middlesex*, Gentleman, is delivered to Bail upon a *Cepi Corpus* to *Joseph Denn* of *Hackney* in the County aforesaid, Gentleman, and *Richard Fenn* of *Highgate* in the County aforesaid, Gentleman, at the Suit of *Richard Roe*.

A. B.

Att' for the Defendant.

Taken and acknowledged

the Day of

1696, before *A. B.*

One of the Commissioners.

And in taking the Recognizance, these or the like words must be used :—You (calling the Bail by their names) do jointly and severally undertake, that, if the Defendant shall be condemned in this Action at the Suit of the Plaintiff, (naming his name,) he shall satisfy the costs and condemnation, or render himself into the custody of the Marshal of the Marshalsea of the court of King's Bench, or you will pay the costs and condemnation for him.

[How if the Action be removed from 'an inferior Court by *Habeas Corpus*.]

And if any Bail be given upon any Action or Actions removed out of any inferior court by Writ of *Habeas Corpus*, returnable in the court of King's Bench, then, instead of writing upon a *Cepi Corpus* as before, you must write upon a Writ of *Habeas Corpus*, and instead of writing the Plaintiff's name as aforesaid, you must write at the Suit of the Plaintiff in the plaint; and the Cognizors must undertake, that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the plaint, that he shall satisfy the costs and condemnation, or render his Body, &c. as aforesaid.

[Affidavit of the Caption.]

Secondly, IT IS ORDERED, That the Affidavit for the due taking of every such Bail shall be made either before some Judge of the King's Bench to whom the Bail shall be transmitted, or before some person who shall have power to take Affidavits in matters and causes depending in the said court.

[When to be transmitted.]

Thirdly, IT IS ORDERED, That all Bails taken by any Commissioner, within the distance of forty miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the court of King's Bench, or to one of the Justices of the said court, within eight days after the taking thereof; and all Bails taken by Commissioners, above the distance of forty miles from the said cities of *London* and *Westminster*, shall be transmitted within fifteen days after the taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any one of them shall be returned to his chamber in one of the Serjeants' Inns.

[Commissioners to keep a Book.]

Fourthly, Also every Commissioner is to have a Book kept purposely for entering the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail Piece, and the time of taking thereof, and the Name of him by whom such Bail shall be transmitted, and also the Name of the Attorney for the Defendant. And,

[Which the Plaintiff's Attorney may inspect.—
Exception.—Justification.]

Fifthly, IT IS FURTHER ORDERED, That the Plaintiff's Attorney shall be at liberty to repair to the Commissioners Book for the Names of the Bail, to the end that they may enquire of the sufficiency of them; and if they are found insufficient, they may except against them within twenty days after the said Bail is transmitted, and notice to the Plaintiff or his Attorney of the taking thereof: and in that case the defendant must either put in better Bail, or the Cognizors of such Bail must justify themselves in open court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in court, or before one of the Judges of the said court*.

J. HOLT, } { W. GREGORY,
W. DOLBEN, } { G. EYRE.

* Vide Mich. 9 G. II. Hil. 10 W. III. Easter, 5 G. II.

By Stat. 4 & 5 W. & M. c. 4. The Judges of the several courts at *Westminster*, or any two of them, whereof the Chief to be one, may, by Commission under the Seal of their respective courts, appoint Commissioners

EASTER TERM, 9 W. III. 1697.

[When Rolls shall not be filed without leave of the Court.]

IT IS OREDRED, That no Plea Roll be filed after the end of the next subsequent Term, of which it ought to be filed, unless leave shall be given to do it by Rule of Court, and the Secondary shall subscribe such Rule *.

missioners to take Recognizances of Bail in Suits depending before them, and upon Affidavit of the due taking thereof, such Recognizances shall be as effectual as if taken before themselves; and the Cognizors are not compellable to appear in court in person (unless they live in *London*, or within ten miles thereof) to justify themselves, but may do it by Affidavit made before Commissioners in the country.

* Vide Michaelmas, 9 W. III. and Michaelmas, 5 Ann.

TRINITY, 9 *W.* III. 1697.

[When a Defendant in Custody of the Marshal shall be charged in Execution.]

IT IS ORDERED, That if Judgment be given against any Defendant being a Prisoner in actual custody of the Marshal of this court, if the same Defendant shall not be charged in custody of the said Marshal, upon the same Judgment, before the end of the second Term after Judgment obtained, (no Writ of Error being pending thereupon,) that then Common Bail shall be filed for such Defendant, upon notice thereof first given to the Attorney for the Plaintiff in such Judgment*.

* Vide Easter, 16 Car. II. Trin. 2 G. II. and Hil. 26 G. III.

MICHAELMAS TERM, 9 *W.* III.

1697.

IT IS ORDERED, That all and singular the Clerks of the Chief Clerk of this court shall bring in the several Rolls of this present Term before the Effoin-day of the next Term, so that they may be filed that Term; and also the Rolls of Hilary Term before the Effoin-day of Easter Term next following; and the Rolls of Easter Term before the end of Trinity next; and the Rolls of Trinity Term before the Effoin-day of Michaelmas Term next, to be filed in like manner, and so in every Term successively; and that no Rolls for the future be received after the several times aforesaid, without a Special Rule of Court to the contrary be obtained*.

* Vid. Trin. 10 *W.* III., Michaelmas, 5 Ann.

HILARY TERM, 10 W. III. 1698.

[No Bail to be put in on *Habeas Corpus* before Writ returned.]

IT IS ORDERED, That no Bail shall be put in upon any Writ of *Habeas Corpus* before that Writ be returned; and that such Bail shall not be taken by any Justice of this court, unless the Writ, with the return thereof, shall be offered before the said Justice, to be filed at the time of putting in thereof*.

* Vide Easter, 29 Car. II., Hilary, 2 Jac. II., 8 W. & M. 1696. R. 3. Michaelmas 1651. and Michaelmas, 16 Car II.

After a cause is removed from an inferior court by *Habeas Corpus*, if the Plaintiff mean to proceed, his Attorney must take out a Rule from one of the Judges of the court into which the *Habeas Corpus* is returnable for a *Procedendo*, unless bail be put in thereupon within four days in Term, or six days in Vacation, and serve a copy thereof upon the Attorney bringing the *Habeas Corpus*. If Bail be accordingly put in, and it become necessary to require a justification, the Plaintiff's Attorney must in like manner take out and serve a Rule for better Bail; and the Defendant's Attorney must justify his Bail in four days after service thereof in Term, or if the Rule be served in Vacation, upon the

TRINITY TERM, 10 W. III. 1698.

[A like Rule for Rolls of Easter Term.]

IT IS ORDERED, That all and singular the Clerks of the Chief Clerk of this court shall bring in the Rolls of every Easter Term here in court before the first day of every Trinity Term, so that those Rolls be filed. AND IT IS FURTHER ORDERED, That the several Rolls of the last Term not yet filed, shall be brought here in court without delay

first day of the following Term; and in default of performance either of the first or second Rule, the Plaintiff may bring back his cause by Writ of *Procedendo*.

The several Rules which permit a Plaintiff to deliver his declaration *de bene esse*, apply only to such Actions as have their commencement originally by process issued out of this court: So that if a cause be removed by *Habeas Corpus* or otherwise from an inferior court to the King's Bench, the Plaintiff cannot deliver his declaration until the Defendant be fully in court, for he must declare in chief.

Vide the Notes to Rule Hil. 2 Jac. II. respecting Bail upon Actions removed from inferior courts, where the cause of Action is less than 10*l*. Vide also the notes to R. Michaelmas, 8 Anne.

by

176 RULES AND ORDERS OF THE

by the several Clerks aforesaid, so that such
Rolls be filed of the same Term*.

EASTER TERM, 11 W. III. 1699.

RULE I.

[When the Defendant's Attorney may enter the
Plaintiff's Demurrer of Record.]

IT IS ORDERED, That if any Plaintiff here
in court shall demur in law to any Plea,
Rejoinder, or Rebutter by any Defendant
here in court exhibited, and such Defendant
join in Demurrer, that then the Attorney
for the Plaintiff shall enter of Record such
Demurrer; and in default thereof, upon a
Rule given by the Secondary for entering
such Demurrer, the Attorney for the De-
fendant shall enter such Demurrer†.

* Vide R. Michaelmas, 9 W. III. and Michaelmas,
5 Ann.

† When issue is joined in Demurrer, the several facts
being admitted by the Pleadings and made a question
of law, either party may (and the Defendant may, with-
out waiting for a default in the Plaintiff, as in the case
of trial by proviso, proceed to argue the Demurrer;
which

Same Term.

RULE II.

[Times for putting in Special Bail.]

IT IS ORDERED, That in every Action brought in this court where the Defendant, according to the course of this court, ought to put in Special Bail, that such Defendant, in the several Terms of Saint Hilary and the Holy Trinity, shall have leave to put in a sufficient Bail, at the suit of any Plaintiff, before the day of continuance by the Secondary of this court, to be appointed after the aforesaid Terms; and that within the time aforesaid the Plaintiff shall not sue

which if the Defendant do, he must make up the Demurrer-book, deliver it, and pay for the entries; after which, having given a Rule to enter the issue, and procured the Pleadings to be entered of record, he may move for a Rule for a *Concilium*, and proceed to argument in the same manner as is usual for Plaintiffs upon the like issues. The practice directed by this Rule, that, if the Plaintiff make default in entering his Demurrer, the Defendant may enter it, is obsolete; for now, if the Plaintiff do not pay obedience to the Master's Rule, the Defendant may sign judgment.

178 RULES AND ORDERS OF THE

any Process against the Defendant or his Bail upon the Bail-bond given to the Sheriff or Bailiff of a liberty for the appearance of the Defendant. AND IT IS FURTHER ORDERED, That, in the several Terms of Saint Michael and Easter, if the Defendant shall be arrested in *London* or *Middlesex* upon any Process issuing out of the court here, that the Defendant shall have leave to put in sufficient Bail, at the suit of the Plaintiff, at any time within eight days next after the return of such Writ or Process, and within fourteen days next after the return of any Writ sued out in any other county*.

HILARY TERM, II W. III. 1699.

[As to inrolling Deeds.]

IT IS ORDERED, That all Deeds and Indentures acknowledged here in court, or before any Justice of this court, for the future shall be inrolled amongst the Rolls of the Chief Clerk of this court assigned to

* Vide *Rolls*, Michaelmas 8 Ann. and 22 Geo. III., and the notes to the latter.

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inrol Pleas, and not elsewhere; and that every person acknowledging any such Deed or Indenture hereafter in court to be inrolled shall appear publicly in court, and acknowledge such Deed or Indenture in open court; and that every Deed acknowledged out of court before any Justice shall be brought here into court by such Justice to be inrolled *.

* This Rule was made in consequence of a dispute between Mr. Harcourt, Secondary, on the Crown side of the court, and Lady Ash, about the due inrollment of a Deed; *vid.* 12 Mod. 321. The latter part of the Rule is however now dispensed with, and a Deed may be acknowledged before a Judge, at his chambers, who will grant his *Fiat* for inrolling it.

TRINITY TERM, 12 W. III. 1700.

[Defendants' Attornies to pay for Copies of Declarations, &c.—If Declaration not paid for, it may be filed.—If the Issue be not paid for, the Plaintiff may sign Judgment.]

“ WHEREAS the Defendants' Attornies
 “ and others who have appeared for
 “ Defendants in this court, and to whom
 “ Declarations have been delivered, by the
 “ course of the Court do make Copies of
 “ the said Declarations, and charge their
 “ Clients four pence *per sheet* for every such
 “ Copy, and afterwards do frequently pre-
 “ tend they have lost the same, or wilfully
 “ refuse to deliver back to the Plaintiff's
 “ Attorney such Declarations when called
 “ for, which they ought to do, whereby
 “ many inconveniencies and manifest de-
 “ lays have been and daily do happen to the
 “ Plaintiff's proceedings; for remedy where-
 “ of,” IT IS ORDERED, That from and af-
 “ ter the first day of next Michaelmas Term,
 “ upon the appearance of any Attorney or
 “ other person for any Defendant in this
 “ court, the Plaintiff's Attorney shall not be
 “ bound

bound to deliver to the Defendant's Attorney the original Declaration, but instead thereof, shall deliver a true copy of such Declaration; and that upon the delivery or tender thereof, the Defendant's Attorney, or other person acting for him, shall pay unto the Plaintiff's Attorney, or other person acting for him, for the copy of such Declaration after the rate of four pence *per sheet* copywise, together with the Stamps or King's Duty thereon; which shall serve and be in lieu of the copy of such Declaration usually made by the Defendant's Attorney; and that upon pleading any general Issue or general Demurrer to any Declaration before any Special Demurrer or Special Plea pleaded, the Plaintiff's Attorney shall and may deliver unto the Defendant's Attorney a copy of such Issue or Demurrer, who shall pay for the same after the rate of four pence *per sheet* copywise, and also for the Stamps thereon: And if any Attorney, or other person, shall refuse to pay for the copy of any Declaration so as aforesaid tendered, the Plaintiff's Attorney shall and may leave the said copy of such Declaration in the Office with the Clerk that keeps the files of Declarations of this court, who shall re-

ceive the same without fee or reward ; and thereupon the Plaintiff's Attorney giving Rules to plead may, for want of a Plea, sign Judgment ; and, before any Plea shall be received, the Defendant's Attorney shall pay for the Copy of such Declaration and the Stamps as aforesaid : And in case the Defendant's Attorney shall not pay for the Copy of any General Issue or Demurrer so as aforesaid joined, and also for the Stamps, the Plaintiff's Attorney may sign Judgment as if no Plea or Demurrer had been given or pleaded *.

J. HOLT.

J. TURTON.

H. GOULD.

* Vide R. Trin. 2 Geo. II., Michaelmas 2 W. & M., Trin. 22 Geo. III., and the notes to the two latter.

[183]

RULES AND ORDERS
OF THE
COURT OF KING'S BENCH,

TEMPORE ANNÆ REGINÆ.

TRINITY TERM, 1 *Annæ* 1702.

[Time of surrendering Principal where Bail are
sued on their Recognizance.]

IT IS ORDERED, That if any person or
persons being, or that shall hereafter be-
come, Bail or Manucaptors in this court for
any Defendant in any Action whatsoever,
and shall be impleaded by Action of Debt
upon the Recognizance in such suit acknow-
ledged, such person or persons shall have
liberty to render such Defendant into the

custody of the Marshal of this court in discharge of his Bail, by the space of eight entire days in full Term next after the return of the Writ of *Exigent* or other Process sued out against such Bail, and upon noticethereof given to the Plaintiff, or his Attorney in the suit aforesaid, all further Proceedings against such Bail or Manucaptors upon the Recognizance aforesaid shall cease *.

By the Court.

* This Rule was made in consequence of the case of *Milner v. Petit*, Hil. 13 W. III., 1 Raym. 721., wherein Holt, Ch. Jus. said that the Judges had made a Rule, that, if the Plaintiff in the Original Action bring Debt against the Bail on their Recognizance, the Bail shall have eight days after the return of the Writ to render the Principal; and if there are only four days in the Term after the return of the Writ, he shall have four days in the following Term. But, antecedent to this determination, the Court had adopted the like practice. — *v. Watts*, Bat. 12 W. III., 12 Mod. Rep. 351., Hil. 11 W. III., 1 Salk. 101.

The Court never permit a *Scire Facias* against Bail to be amended; and, in case of any mistake therein, the Plaintiff must move to quash his own Writ. *Gray v. Jefferson*, 12 Str. 1165.

If the Plaintiff proceed against Bail by Action upon the Recognizance, they have, by the above Rule, eight entire days in full Term next after the return of the Writ to surrender their Principal, and thereby discharge themselves of their Recognizance; and if (as is the

most

Same Term.

RULE II.

[Notice of Surrender to be given.]

IT IS ORDERED, That where any Defendant in any Action here in Court depending, shall be rendered into the custody of

most usual way) the Plaintiff sue by *Scire Facias*, they have until the rising of the Court upon the Return-day of the first *Scire Facias*, if a *Scire Feci* be returned, and if *Nihil* returned, until the rising of the Court upon the Return-day of the second *Scire Facias*, to surrender the Defendant and discharge themselves. Anonymous, 8 Mod. Rep. 341.

If a Defendant become Bankrupt, and obtain his Certificate, the Court, or a Judge at Chambers will, upon application at any time before the Bail become fixed, order an *Exoneratur* to be entered upon the Bail-piece, for the Defendant being discharged of the Debt, would (if surrendered by his Bail) be entitled to his discharge; and therefore the Court, to avoid circuitry, do that directly which they could otherwise do indirectly; but Bail in Error not having the alternative of paying the Debt or surrendering the Principal, are not entitled to be discharged although the Defendant become Bankrupt, and be himself discharged of the Debt. Southcott v. Branthwaite, 1 T. Rep. B. R. 624. Woolley & al. v. Cobb & al., 1 Burr. 245.

of the Marshal of this court in discharge of his Manucaptors, the Attorney for such Defendant.

If the Defendant become a Peer pending the Action, the Court will order an *Exoneratur* to be entered upon the Bail-piece, for the Bail could not afterwards surrender their Principal. *Trinder v. Shirley*, Doug. 45.

Bail to the Action are not liable beyond the sum sworn to and costs; *Martin v. Moore*, 2 Str. 922., *Jackson v. Hassell*, Doug. 329., *Baldwin v. Martin*, 2 Str. 826.; though the Defendant confess the Action by *Cognovit*, without notice to the Bail, they nevertheless remain liable. *Hodson v. Nugent*, 5 T. Rep. B. R. 277.

Bail to the Sheriff are liable to the extent of the penalty in the Bail-bond to satisfy the full debt and costs, although by 12 G. I. c. 29. the Sheriff cannot take the Bond in a penalty of more than double the sum sworn to. *Mitchell v. Gibbons*, C. B. H. Blac. 76.

The Sheriff on an attachment for not bringing in the body is liable to the whole debt and costs. *Fowles v. Macintosh*, C. B. H. Blac. 233.

The Court set aside the proceedings against Bail, because they were summoned only an hour before the Court rose upon the Return-day of the *Scire Facias*; and the Sheriff's return of *Scire Faci* does not estop the Bail from shewing that they were summoned so late on the Return-day, that they could not surrender their Principal before the rising of the Court. *Webb v. Harvey and another*, 2 T. Rep. B. R. 757., *Poole v. Wells*, there cited.

If a Writ of Error be brought on the Judgment in the Original Action after a *Ca. Sa.* returned, and before the

Defendant shall, without delay, give notice of such rendering to the Plaintiff's Attorney,

the Bail are fixed, the Court will stay Proceedings upon the *Scire Facias* against Bail, till the determination of the Writ of Error, upon the Bail undertaking to render the Defendant, or pay the money recovered, if Judgment be affirmed within four days next after affirmation, and agreeing not to file any Bill in Equity. *Capron v. Archer*, 1 Burr. 340. *Cole v. Buckland*, 2 Str. 872. *Hunter v. Sampson & al.* Bail of Yardley, 2 Str. 781.; and upon such application, if there be no Bail in Error, the Court will not stay Execution unless the Bail undertake to pay the Costs in Error if Judgment be affirmed; *Ritson v. The Bail of Nash*, 2 Str. 877.; but if the Writ of Error be allowed before the *Ca. Sa.* is returnable, the Writ of Error operating as a *Superfedeas* of the Writ of Execution, the Plaintiff cannot thereupon proceed against the Bail. *Smith v. Nicholson*, 2 Str. 1186. *Perry v. Campbell and another*, 3 T. Rep. B. R. 390.

If a Defendant die after *Scire Facias* sued out against the Bail, they become fixed, although the Writ be not returnable, their Recognizance is forfeited upon the return of the *Ca. Sa.*; and it is matter of indulgence to permit them afterwards to discharge themselves by rendering the Defendant. *Parry v. Berry*, 2 Raym. 1452.

The Plaintiff having obtained Judgment, issued a *Ca. Sa.* against the Defendant who rendered himself before the return, but neglected to give notice thereof and exonerate the Bail-piece; the Plaintiff afterwards proceeded to Judgment by *Scire Facias* against the Bail,
and

180. RULES AND ORDERS OF THE

torney, and shall make Affidavit thereof before the Bail in that Action shall be filed or discharged; and in default thereof, such rendering shall be void *.

By the Court

TRINITY TERM, 3 Anna 1704.

[Principal rendering himself a *Respondent* *fi*, to be left with the Secondary.]

IT IS ORDERED, That where any person shall render himself here in court, or before one of the Justices of this court, in

and the Court would not relieve them on motion, but put them to their Writ of *Habeas Corpus*. *Lyell v. The Bail of Galesby*, 1 Salt. 101.

* After a Defendant is surrendered, notice thereof ought immediately to be given to the Plaintiff's Attorney, and the necessary steps for exonerating the Bail-piece taken; for although an omission thereof shall not vitiate the Surrender, yet, if any costs have been incurred by reason of such omission, the Court will require the Bail to pay the same before they discharge them. *Wells v. Osmond*, 6 Mod. Rep. 238.

discharge

COURT OF KING'S BENCH.

discharge of his Manucaptors, or shall be brought here into court upon a Writ of *Habeas Corpus*, or before the Justices aforesaid, in order to be committed to the custody of the Marshal of this court; such *Reddidi se* or Writ of *Habeas Corpus*, together with the Return thereof, shall be left with the Secondary of this court, or the Judge's Clerk before whom such person was rendered or brought, to be filed; and that a copy or note of such rendering, or Return of the Writ of *Habeas Corpus*, under the hand of such Justice, or the Secondary, shall be delivered to the Marshal of this court, at the time of the commitment of such person to his custody; and such copy or note shall be made and prepared by the person so rendering himself, or procuring such Writ of *Habeas Corpus*, or by his Attorney on his Behalf.

By the Court.

¶ Upon a surrender of a Defendant in discharge of his Bail, his Attorney must immediately give Notice thereof, make Affidavit of the service of such Notice, and get the Marshal's certificate of the Commitment, which, together with the Bail-piece, he must take to the Master, who will indorse an *Exonerator* thereupon. The reason the Marshal's certificate is neces-

MICHAELMAS TERM, 3 *Anne* 1704.

[For the Regulation of Attornies.]

“ **W**HEREAS divers complaints have
 “ been made to us, that many At-
 “ tornies and Clerks of the several Courts

say before an *Exoneratur* be entered, is, because if the Defendant escape, or be rescued from the Tipstaff, before he be in actual custody of the Marshal, the Bail remain liable. Vide 6 Mod. Rep. 238.

It is also usual to enter a *Committitur* in the Marshal's Book kept at the King's Bench Office; but whether this be necessary or not, *quærs?* For, per Holt, Ch. Jus., when a prisoner renders in discharge of Bail at a Judge's Chambers, the practice is, to have an entry of it on a piece of parchment, signed by the Judge, which is sent over with the prisoner to the Marshal, and ought to be brought back and filed in the Office, which is in truth the Record; and the entry in the Judge's Book is not so very material. Clapham against Wray, 12 Mod. Rep. 423. The Marshal's Book originally contained entries of the several *Committiturs* returned by him, and filed of Record in the Office; but this practice is now wholly disused, no Return being ever made by the Marshal; and if any entry appear in the Book, it is always made by the Defendant's Attorney, in the case of Surrenders in discharge of Bail, or by the Plaintiff's, if it be to charge a Defendant in Execution.

“ at

" at *Westminster* are not admitted in any
 " of the Inns of Court or Chancery, ac-
 " cording to ancient course and usage, by
 " which they might be resorted to, and
 " business of Law better managed, to the
 " greater ease of the Queen's subjects; the
 " neglect whereof is to the great detriment
 " and decay of the Societies of the Law,
 " and divers inconveniences do thereupon
 " daily happen; for prevention whereof,
 " and to establish a remedy for the same,"

IT IS ORDERED by the Judges of the se-
 veral Courts of Queen's Bench and Com-
 mon Pleas, and the Barons of the Court
 of Exchequer at *Westminster*, That all
 Attornies and Clerks of the said Courts, not
 already admitted into one of the Inns of
 Court or Chancery, shall procure them-
 selves to be admitted into one of the said
 Inns of Court, (if those Honourable So-
 cieties will admit them,) or into one of
 the Inns of Chancery, before the end of
 Trinity Term now next ensuing, and take
 Chambers there, (if conveniently they may
 be had,) else that they take lodgings in
 some convenient place near the said Inns,
 and leave notice in writing with the Butler

or

192 RULES AND ORDERS OF THE

or Porter of such Inn whereof they are admitted, where their lodgings or habitations are, except such persons as are, or shall be hereafter, inhabitants or housekeepers in *London, Westminster, Southwark*, or the Suburbs thereof, and liberty of the Tower of *London*, and *Saint Catharine's* there, and such who are sworn Attornies of any courts within the said cities, towns, and liberties.

AND IT IS FURTHER ORDERED, That, for the future, no person whatsoever shall be sworn an Attorney, or admitted or entered a Clerk of any of the said Courts, or Offices thereunto belonging, (except the persons before excepted,) unless first admitted of one of the Inns aforesaid, and shall bring and produce, at the time of his being sworn an Attorney, or admitted or entered a Clerk, as aforesaid, a Certificate under the hand of the Treasurer or Principal of the Inn whereof he is admitted, which they are respectively to give without being paid any thing for the same, testifying such his admission; which Certificate every Attorney or Clerk so sworn of the said

said Court of Queen's Bench shall deliver to the Secondary of the said court, and every Attorney so sworn of the Court of Common Pleas shall deliver to the Clerk of the Warrants of the said court, and every Clerk of the said court so admitted or entered shall deliver to the respective Prothonotaries of whose Office he shall be admitted, and every Attorney so sworn of the said Court of Exchequer, or Clerk seated in any of the Offices belonging to the said court, shall deliver to the Queen's Remembrancer, or his Deputy for the time being, to be by the said respective Officers filed before the name of such Attorney shall be entered into the Roll of Attornies, or such Clerk admitted, entered, or seated as aforesaid; unto which file of Certificates the respective Treasurers and Principals of the said Inns of Court and Chancery shall or may from time to time resort as they shall see cause, without paying any thing for the same.

AND IT IS FURTHER ORDERED, That no Attorney already sworn, or Clerk already admitted, entered, or seated, or which hereafter shall be sworn, admitted, entered, or seated, and which are or shall be admitted into any of the Societies aforesaid,

o

said, shall put himself out of the Society whereof he is or shall be admitted, until he be admitted of some other of the said Societies, and deliver to the Treasurer or Principal of such Society whereof he was first a Member, a counterpart in writing signed by such Treasurer or Principal, testifying his being admitted of such other Society, except such person shall totally leave off the practice of the Law as an Attorney or Clerk in any of the said courts.

“AND WHEREAS, by the usage, custom, or orders of the Inns of Chancery, the Members thereof were obliged to and did come into Commons, and continue therein according to the orders of such Society, to their great ease in transacting their Causes one with another, and much benefit to their Clients; but of late most or a great number of the said Attornies and Clerks have neglected to come into Commons, or continue therein, according to the respective orders of the said Inns of Chancery, to the great decay and detriment of those Societies:” IT IS FURTHER ORDERED, That, from the end of this present Term, the Attornies and Clerks

who

who now are or shall be admitted into any of the Inns of Chancery, do and shall come into and continue in Commons for the time or times as by the orders of such Society whereof they are or shall be admitted is, are, or shall be ordered, limited, or appointed for them so to do: And in case any Attorney or Clerk aforesaid shall offend against this Rule, or any part thereof, such Attorney shall be put out of the Roll of Attornies, and such Clerk so offending shall be discharged and displaced from such Office to which he belongs, until he or they give obedience to this order; and the Secondary of the said Court of Queen's Bench, and the respective Prothonotaries and Clerk of the Warrants of the Court of Common Pleas, and the Queen's Remembrancer of her Court of Exchequer, or his Deputy for the time being, and all other Officers whom it may concern, are hereby required to give obedience to this order, and see that the same as to themselves be duly observed.

“And for the more effectual and better putting in execution this order, and that it may procure the good hereby designed and intended,” IT IS HEREBY FURTHER ORDERED, That the respective Treasurers

and Principals of the Inns of Chancery, and the Ancients, Rulers, and Governors of the same, do and shall from time to time, by such ways and means as they shall see fit and convenient, procure and get a list of the names of such Attornies and Clerks of the said respective Courts who are not admitted of any of the said Inns of Court or Chancery; which list the said Treasurers, and Principals, Ancients, Rulers, and Governors shall yearly, in Michaelmas Term, deliver unto the Right Honourable the Lords Chief Justices and Lord Chief Baron of the said respective courts for the time being, to the intent the offenders against this order may be compelled to give obedience to the same.

AND IT IS ALSO HEREBY FURTHER ORDERED, That the said Treasurers, Principals, Ancients, Rulers, and Governors in like manner procure and get a list of the names of such persons as take upon them to practise as Attornies or Clerks in any of the said courts, who are neither sworn Attornies, or admitted, entered, or seated Clerks in any of the offices of the said courts; which list is to be delivered as above, to the intent that such offenders may be proceeded against

against in such manner as shall be thought fit*.

JOHN HOLT,	}	JO. BLENCOWE,
THO ^s . TREVOR,		H. GOULD,
EDW. WARD,		R. TRACY,
EDW. NEVILL,		THO ^s . BERRY,
JOHN POWELL,		RO. PRICE,
LIT. POWIS,	}	J. SMITH.

MICHAELMAS TERM, 4 *Annæ* 1705.

[Notice of Trial after a *Ne Recipiatur* entered.]

IT IS ORDERED, That if the Defendant in any Action in *London* or *Middlesex*, and to be tried at the sitting of the Lord Chief Justice of this court, shall enter a *Ne Recipiatur*, and by reason thereof hinder the

* Vide RULES, Michaelmas 1654, Trin. 29 Car. II., Mich. 36 Car. II.

The purpose of the first part of this Rule, viz. that the residence of Attornies may be easily known, is fully answered by Rule, Hil. 30 Geo. III.; the latter part respecting Attornies is grown obsolete since making Stat. 2 G. II. c. 23. and 22 G. II. c. 46., and the Rules of Trin. 31 G. III. and Trin. 33 G. III.

198 RULES AND ORDERS OF THE

Plaintiff that he cannot proceed at that sitting, that then it shall be lawful for the said Plaintiff to proceed to Trial in the said Cause at the next sitting of the said Chief Justice after the entering of the said *Ne Recipiatur*, upon Notice given during the said first sitting *.

By the Court.

• Vide Hil. 15 & 16 Car. II. R. 2.

This Rule was made in consequence of the case of Highmore against Walker, Michaelmas 4 Ann., Salk. 653., in which the Plaintiff having given notice of Trial, and not entering his Cause in the Marshal's book in due time, the Defendant entered a *Ne Recipiatur*; whereupon the Plaintiff entered his cause for the following sitting, and proceeded to Trial without giving fresh Notice; and Holt, Ch. Jus. held, that the Notice fell to the ground with the sitting; but the Clerks in court being of opinion that Notice was unnecessary, the above Rule was made, requiring Notice of Trial in such case to be given during the first sitting.

EASTER TERM, 5 *Annæ* 1706.

[No Special Impar lance without leave of the Court.]

IT IS ORDERED, That a Special Impar lance shall not be allowed the Defendant without the leave of this Court first obtained*.

By the Court.

* If a Declaration be delivered before the Effoin-day of a Term, with notice to plead within the first four days of that Term, and the Defendant plead in abatement, he must intitle his Plea either of the preceding Term, or obtain leave to plead with a Special Impar lance; *Doughty v. Lascelles*, 4 T. Rep. B. R. 520. Every Plea to the jurisdiction and in abatement must be pleaded within four days, reckoning both days inclusively; and every such Plea must be filed with the Clerk of the Papers, pursuant to Rules 1 Jac. I., Trin. 16 Car. II., and Mich. 2 W. & M., and not delivered over to the Plaintiff's Attorney, otherwise the Plaintiff may sign judgment for want of a Plea, and is not bound to take notice of any such Plea; *Jennings against Webb*, 1 T. Rep. B. R. 277., *Harbord v. Perigal*, 5 T. Rep. B. R. 210; but, if the fourth day happen on a Sunday, the Defendant may plead upon the following Monday. *Lee v. Carlton*, 3 Term Rep. B. R. 642.

A Defendant may dispense with the Rule to plead, and plead *gratis*; which if he do, and the Plea be a

MICH. TERM, 5 *Annæ* 1706.

RULE I.

[That an *Incipitur* be entered on the Roll before Judgment signed, and before the Record of *Nisi Prius* be sealed.—Attornies to carry in their Rolls.]

“ **F**OR avoiding many inconveniences
 “ and mischiefs which daily happen to
 “ the Queen’s subjects who prosecute Suits
 “ in this court, through the neglect and
 “ misfeazance of many of the Attornies of
 “ this court, and other persons who prac-
 “ tise as such, in not entering on record
 “ their severall Judgments, Issues, and other
 “ Proceedings and Process in this court, to
 “ the great damage and loss of their
 “ Clients;” IT IS THEREFORE ORDERED
 by this Court, That, from and after the first
 day of next Hilary Term, every Judgment

nullity, as if he plead in abatement after the four days elapsed, the Plaintiff may sign judgment for want of a Plea. In the case to which we now refer, the Plaintiff had given a Rule to plead before he delivered his Declaration, which was held to be void; but the Defendant’s pleading dispensed with the necessity of a Rule to plead. *Brandon v. Payne*, 1 T. Rep. B. R. 689.

in

in debt, case, covenant, trespass, trover, or any other Action, shall be entered fairly on the Roll, or an *Incipitur* thereof, before such Judgment shall be signed by the Secondary, or any Justice of this court, and the names of the Plaintiff and Defendant, with the county where the Action is laid, and the nature of the Action, with the Attorney's name, shall be entered in a book to be kept by the Secondary of the court for that purpose, for which nothing shall be paid but the ancient and accustomed fee for entering such Judgment*.

AND

* Vide RULES, East. 17 Jac. I., East. 1657, East. 4 Jac. II., Trin. 4 Jac. II., Mich. 9, and Trin. 10 W. III., stat. 6 G. II. c. 27.

The Fees due to the Chief Clerk on entering all Pleadings, signing Judgments, &c. are as follow :

If the Pleading do not exceed 10 common-law sheets, you pay		£.	s.	d.
		0	3	6
If not more than 12 sheets		0	4	6
16		0	5	6
20		0	6	6
24		0	7	6
28		0	8	6
32		0	9	6
36		0	10	6
40		0	11	6
44		0	12	6
48		0	13	6

If

202 RULES AND ORDERS OF THE

AND IT IS FURTHER ORDERED, That no record of *Nisi Prius* shall be sealed or passed at the *Nisi Prius* office by the *Custos Brevium* of this court, or any Clerk of that office, before the Issue in that Cause be fairly entered on record, or an *Incipitur* thereof, and such entry, with the record of *Nisi Prius*, be first brought to and signed by the Secondary of the court; for which no Fee shall be demanded or paid, but the usual and accustomed Fee due to the Chief

If not more than 52 sheets	0 14 6
56	0 15 6
60	0 16 6
64	0 17 6
68	0 18 6
72	0 19 6
76	1 0 6
80	1 1 6
84	1 2 6
88	1 3 6
92	1 4 6
96	1 5 6
100	1 6 6

And for the entry of a *Latitat*, or Bill of *Middlesex*, to save the Statute of Limitations, - - - 0 1 6

For a *Scire Facias*, and Recognizance of Bail, each, - - - 0 2 0

Non Pros, for want of Declaration, - - - 0 3 0

Clerk

Clerk of this court for entry of such Issue on record.

AND IT IS FURTHER ORDERED, That every Attorney shall bring in all his Rolls into the office, fairly engrossed in a good court hand, by the times limited by former Rules; that is to say, the Rolls of Trinity, Michaelmas, and Hilary Terms, before the Effoin-day of every subsequent Term, and the Rolls of Easter Term before the first day of Trinity Term; and that no Attorney at large, or any other person, shall take any Numbers or file any Rolls, but the Clerks of the Chief Clerk of this court only.

J. HOLT,

J. POWELL,

LIT. POWIS,

H. GOULD.

MICHAELMAS TERM, 5 *Annæ* 1706.

RULE II.

[Filing Warrants of Attorney.]

IT IS ORDERED, in pursuance of an Act of Parliament lately made and provided to compel the several Attornies of this

court to file their Warrants of Attorney, That the Attorney for the Defendant, at the time of his appearance for such Defendant, shall give the Plaintiff's Attorney the Warrant of Attorney for such Defendant; and at the time of the delivery of the copy of the Declaration or taking thereof out of the office where it is filed, shall pay fourpence for the said Warrant of Attorney; which Warrant of Attorney the said Plaintiff's Attorney shall file with the Officer appointed for filing thereof, at the same time when he files or ought to file the Warrant of Attorney for the Plaintiff: And if such Attorney for the Defendant shall refuse to pay the Plaintiff's Attorney for the said Warrant of Attorney in manner and form aforesaid, then such Attorney for the Plaintiff, upon such refusal, may sign Judgment against the Defendant in such Action by Default*.

By the Court.

* Vide Easter 4 Jac. II. 1688., Stat. 4 & 5 Ann. c. 16., and the notes to Rule Trin. 22 G. 3.

Should any clerical error occur in the entry of the Warrant of Attorney, the Court will at this day permit an amendment although error be brought; *Green v. Rennett*, 1 T. Rep. B. R. 782.; and though the Action be upon a penal statute. *Richards qui tam v. Brown*, Doug. 113.

Same Term.

R U L E III.

[Within what Time Defendants shall plead.]

IT IS ORDERED, That if any person or persons being arrested upon any Writ of *Latitat*, or any other Process issuing out of this court, returnable here in court before three weeks of Easter Term, or the month of Michaelmas in the Term of Saint Michael, and the Defendant shall appear and put in Common or Special Bail thereupon, and the Plaintiff shall declare in any Action whatsoever, and shall lay his Action in *London* or *Middlesex*, that then if the Declaration shall be delivered to the Attorney for the Defendant, or filed or left in the Office before the Effoin-day of the month of Easter in Easter Term, and before the Effoin-day of the Morrow of All Souls in the Term of St. Michael, then the Defendant in such Action, upon Rules given, shall plead to Issue of the same Term in which the Declaration was delivered, filed, or left, by the space of two days next before the Effoin-day of the next Term, otherwise Judgment

ment may be entered by default; but if the Declaration be not delivered, filed, or left until after the said several Effoin-days in each Term of Easter and Michaelmas, then the Defendant shall have leave to plead until the next Term, according to the ancient course of this court*.

TRINITY TERM, 6 *Annæ* 1707.

[Within what Time Plaintiffs shall declare against Prisoners.]

“**T**HAT where any Defendant, being a
 “ Prisoner in custody of the Marshal
 “ of this court upon Mesne Process, shall be
 “ taken and detained in custody of any She-
 “ riff of the kingdom, by virtue of a Judge’s
 “ Warrant of this court, for an escape made
 “ from the custody of the Marshal afore-
 “ said,” IT IS ORDERED, That the Plain-
 tiff in such Action shall declare against the
 said Defendant in custody of such Sheriff

* Vide RULE, Trin. 19 G. III. and the notes added.
 before

before the end of the second Term after such taking and detaining, otherwise a *Superse-deas* may be made for such Defendant*.

MICHAELMAS TERM, 8 *Annæ* 1709.

RULE I.

[Within what Time Special Bail shall be put in.]

IT IS ORDERED, That where any Defendant shall be arrested by the Sheriffs of *London* or *Middlesex* by Process issuing out of this court, and shall give to such Sheriff a Bail-bond for his appearance on the day of the return of such Process, such Defendant shall have leave for four days after that return to put in good Bail at the suit of the Plaintiff in such Process; and within that time all proceedings upon the Bail-bond to the Sheriff shall stay: And in case of arrest of any Defendant in any other county of this kingdom by Process issuing out of this court as aforesaid, such Defendant shall

* Vide RULES, Trin. 2 G. I., and Hil. 26 G. III.

have

have leave for six days to put in good Bail after the return of such Process, without any prosecution whatsoever to be made in the mean time on the Bail-bond to the Sheriff*.

* Vide RULES, Eas. 11 W. III. R. 2., and Trin. 22 G. III., and the notes to the latter.

If the same Persons who were Bail to the Sheriff become Bail above, the Plaintiff cannot enforce a justification merely by entering an exception and giving notice thereof, but must proceed by calling upon the Sheriff by Rule of court, first to return his Writ, and secondly to bring into court the body of the Defendant; and if Bail above have been put in in due time, but not otherwise, he must also enter an exception thereto, and give notice thereof; after which proceeding, unless Bail justify within the time given by the Rule to bring in the body, or surrender the Defendant in discharge of their recognizance, (Vide RULE Trin. 33 G. III.) the Court will grant an Attachment against the Sheriff.

If the Defendant neglect either to put in Bail above or to justify his Bail in due time, and the Plaintiff thereby obtain an Attachment against the Sheriff, or bring an Action upon the Bail-bond, and though Defendant afterwards perfect his Bail, and apply to the Court to set aside the Proceedings; the Rule in such case always is made upon payment of costs; and if the Plaintiff have lost a Term, viz. if he might have proceeded to trial at the sitting within Term, and has lost an opportunity of so doing by the Defendant's neglect of putting in or justifying his Bail; the Rule further is, that the Bail-bond or Attachment do remain a security for the debt

Same Term.

R U L E II.

[What Time shall be allowed a Plaintiff to except to Bail.]

IT IS ORDERED, That no exception to Special Bail put in before any Justice of this court shall be made for the future, after twenty days notice given of such Bail being put in, according to the course of this court, and that exception after that time made shall be void and of no force*.

debt and costs, but it is otherwise if the Plaintiff have not lost a Term. *Hill v. Bolt*, 4 T. Rep. B. R. 350. *Gravatt v. Williams*, there cited.

Motions and Affidavits for Attachments in Civil Actions are proceedings upon the civil side of the Court until the Attachment issue, and are to be intitled with the names of the parties Plaintiff and Defendant; but after the Attachment issued, all subsequent proceedings are upon the Crown side, and from that time the King is to be named as the Prosecutor, as "The King against the Sheriff of *Middlesex*." *Wood v. Webb*, 3 T. Rep. B. R. 253., and the cases there cited.

* Vide RULE, Trin. 22 G. III., and the notes thereto.

RULES AND ORDERS
OF THE
COURT OF KING'S BENCH,
TEMPORE GEORGII PRIMI.

TRINITY TERM, 2 G. I. 1716.

[When a Prisoner shall become supersedeable for want of the Plaintiff proceeding against him.]

IT IS ORDERED by the Court, That if any Defendant shall be committed to the custody of the Marshal of this court, or charged in custody of the said Marshal, or arrested or committed by virtue of the Process of this court to the custody of any Sheriff or other Officer whatsoever, at the suit of any Plaintiff, and shall so remain in custody for two Terms, and the Plaintiff shall not declare against such Defendant within that time, that then such Defendant, after the

the end of the second Term after such imprisonment, shall be discharged out of the prison where he shall be so detained, on filing Common Bail, signed by one of the Justices of this court, without giving notice to the Plaintiff or his Attorney: And if such Plaintiff shall declare against such Defendant a prisoner in custody of the Marshal of this court, or any Sheriff or other Officer as aforesaid remaining, and shall not proceed to Trial or Judgment within three Terms next after such Declaration delivered; or if any Plaintiff shall obtain Judgment in the court here in any Action against any Defendant a prisoner, and shall not charge the said Defendant so in prison remaining, in execution upon the Judgment so obtained, within two Terms next after such Judgment so had and obtained, then such Defendant so in prison remaining shall have leave to file Common Bail, or to sue out a Writ of *Supersedeas* out of the court here, according to the course of this court, for his discharge out of custody where he shall be so detained, to be granted by one of the Justices of this court, if cause shall not be shewn to the contrary by the Plaintiff or his Attorney, upon Notice to them or either of them given by the Attorney for the Defendant, and

Oath of the said Notice to be made, if the Plaintiff shall not appear before the Judge aforesaid, to hinder filing the Common Bail aforesaid, or making the said Writ of *Superfedeas**.

EASTER TERM, 7 G. I. 1721.

[Records of *Nisi Prius* to be sealed before the day of Sitting for their Trial.]

IT IS ORDERED, That all Records of *Nisi Prius* in *London* and *Middlesex* be sealed on or before the respective days appointed by the Lord Chief Justice in the *Sittings Paper* for their Trial†.

* Vide RULES, East. 16 Car. II. East. 5 W. & M. Trin. 9 W. III. Trin. 6 Ann. Hil. 26 G. III., and the notes to the latter.

† Vide RULE, Trin. 1 Jac. II. Mich. 5 Ann. R. I.

HILARY TERM, 8 G. I. 1721.

[In what case the Plaintiff may, on delivering the Demurrer-book, give Notice of executing Inquiry, if Judgment be afterwards given for him.]

“ **W**HEREAS great delays often happen
 “ to Plaintiffs in their Suits in this
 “ court, by reason of Demurrers in Law
 “ by the Defendant’s Attorney, after the
 “ Plaintiff hath tendered the Issue to be
 “ tried by the country, upon the Plea of
 “ the said Defendant pleaded, and hath
 “ delivered Paper-books, with Notice of
 “ Trial, according to the course of this
 “ court, so that after Judgment obtained
 “ by the Plaintiff upon such Demurrer in
 “ Law, there is not sufficient time to give
 “ Notice of executing a Writ of Inquiry
 “ of Damages within that Term in which
 “ the Judgment shall be so obtained:”

THEREFORE IT IS ORDERED for the future,
 That in every case where the Plaintiff shall
 conclude to the country upon the Defendant’s
 Plea, and shall give Notice of Trial
 of the Issue upon the Paper-book as afore-
 said; and thereupon the Defendant, to

hinder the Trial of the Issue, shall demur in Law to the Replication or Plea of the Plaintiff, and the Plaintiff shall join in such Demurrer, and thereupon shall obtain Judgment; the Attorney for the Defendant shall be obliged to accept of Notice of executing a Writ of Inquiry of Damages, from the time of Notice of Trial given upon the Paper-book as aforesaid *.

* Where Issue is joined upon any Special Pleading, and the Paper-book is made up and delivered with Notice of Trial, if the Defendant return the Book with a Demurrer, having struck out the Pleadings subsequent to that to which he demurs, and Judgment be given for the Plaintiff upon the Demurrer, he may by the above Rule, execute his Inquiry, giving only so many days Notice thereof, as would have been sufficient, had such Notice been given when the Paper-book was delivered with Notice of Trial.

The Court will give the Defendant costs, if a Plaintiff give Notice of executing a Writ of Inquiry, and do not proceed accordingly, or countermand in due time, in like manner as for not proceeding to Trial; *Sutton v. Bryan*, 2 Str. 728.

Upon delivery of a Paper-book with Notice of Trial, if the Defendant return it with the Special Pleadings struck out, and plead the General Issue, the Plaintiff may deliver the Issue, with short Notice of Trial for the same Sitting or Assizes as in his former Notice; and the Rule of Easter, 30 G. III. does not apply to this case, but only to such, where, under
a Judge's

MICH. TERM, 11 G. I. 1724.

[When Judge's Summons shall be returnable.]

IT IS ORDERED, That no Attorney or other person shall be summoned to attend any Justice of this court, nor any matters be transacted before such Justice at his chambers, or elsewhere out of court, during the sitting of this Court at *Westminster*, and all orders and other transactions so to be made by such Justice shall be vacated.

a Judge's Order, the Defendant is bound to accept short Notice of Trial. In the case stated, the latter Notice has relation back to the time Notice was given upon the Issue first joined, and cannot be esteemed short Notice within the meaning of that Rule.

COURT OF KING'S BENCH
MICH. TERM, 1727.
RULES AND ORDERS

OF THE
COURT OF KING'S BENCH,

TEMPORE GEORGII SECUNDI.

TRINITY TERM, 1 Geo. II. 1727;

[How the Plaintiff shall proceed in his Action
where he appears for the Defendant, Sec.
Stat. and when Defendants ought to plead.]

“ **T**o establish the practice of this
“ court upon the late act of Par-
“ liament for preventing frivolous and vex-
“ atious Arrests,” IT IS ORDERED, That
from and after the last day of this Term,
in all causes where a Copy of the Process
of this court shall be served upon any De-
fendant

Defendant or Defendants, and an Appearance entered, or Common Bail filed for such Defendant or Defendants by the Plaintiff's Attorney pursuant to the said Act; the Plaintiff's Attorney, in such case, shall leave a Copy of the Declaration in the Office, with the proper Officer appointed for that purpose, and also give Notice thereof to the Defendant or Defendants, by delivering an English Notice, written in Secretary-hand, to such Defendant or Defendants, or by leaving the same at the last or most usual place of abode of such Defendant or Defendants; in which Notice shall be likewise expressed, the nature of the Action, and at whose Suit prosecuted, and the time limited by the Rules of this court for such Defendant or Defendants to plead to such Action; and that in case such Defendant or Defendants do not plead to such Declaration by such limited time so to be expressed in such Notice, Judgment shall be entered against such Defendant or Defendants by default: and from the time of giving such Notice as aforesaid, such Declaration shall be deemed well delivered to such Defendant or Defendants, and not otherwise; and in case such Defendant or Defendants,

218 RULES AND ORDERS OF THE

Defendants, after such Notice given, do not plead by the time the Rules for pleading are out, the Plaintiff, in such case, may sign his Judgment without any other or further calling for a Plea, and thereon give Notice of executing his Writ of Inquiry, either by delivering a Notice in writing to such Defendant or Defendants, or by leaving the same at the last or most usual place of abode of such Defendant or Defendants, which shall be a sufficient Notice to such Defendant or Defendants of the time of executing such Writ of Inquiry.

“ And whereas, by the Rules of this court, Defendants have usually been allowed eight days time to plead ;” IT IS FURTHER ORDERED, That, from and after next Hilary Term, four days only shall be allowed such Defendants from the time of giving any Rule to plead *.

R. RAYMOND.

J. REYNOLDS.

E. PROBYN.

* Vide Stat. 12 G. II. c. 29., and 5 G. II. c. 27. Vide also, Rules, Trin. 5 & 6 G. II. Mich. 10 G. II. Trin. 22 G. III. and the notes thereto.

By Stat. 5 & 6 W. & M. c. 25. the day and year of signing every Writ issued to arrest any person before

TRINITY TERM, 2 *Geo. II.* 1728.

[When Bail is put in for a Defendant, the Declaration must be delivered to his Attorney, but should it not be known where he resides, it may be filed, and Notice thereof given to the Defendant.]

IT IS ORDERED, That in every Cause, in which Special or Common Bail shall be filed, and Notice thereof given to the Attorney

fore Judgment, shall be set down thereupon; and by Stat. 2 G. II. c. 23. the name of the Attorney issuing forth every such Writ or Process, and Writ of Execution, and the Warrants thereon, shall be subscribed thereto; but by Stat. 12 G. II. c. 13. the not subscribing the name of the Attorney on the Warrant shall not vitiate the same, provided the Writ be regularly subscribed, and Sheriffs are required to subscribe the name of the Attorney issuing such Writs, on penalty of 5*l.*; but the name of the Attorney need not be subscribed to an Attachment of Privilege; Fields, one, &c. *v.* Lewen, 4 T. Rep. B. R. 275.

Until of late, it was the general opinion of Practisers, that when either the Plaintiff or Defendant were called upon to speed the proceedings of a Cause by Rule, to plead, reply, &c. it was sufficient to do the act required, at any time before the adverse party availed himself of the non-performance, which practice, we believe,

torney for the Plaintiff, a Copy of the Declaration shall be delivered to the Defend-

believe, never received the *fiat* of authority from the Court, but arose from the indulgence of one Clerk in court to another, whilst the proceedings were carried on by them as Agents for the Attornies at large, and from thence was continued down until some late determinations.—This indulgence, however, seems not to have extended to the returning of Paper-books, as appears by the resolutions in matters of practice, agreed upon by Mr. Secondary Livesay, and the ancient clerks in the year 1669, and which was certified as the practice, by the present Master Benton to Lord Mansfield, upon arguing the case of *Hafeler v. Ansel*, Doug. 197. It is not possible to assign any reason for this distinction; and although there are contradictory cases, yet now the case of *Hafeler v. Ansell*, above cited, and a more modern one of *Thompson v. Ryall*, 4 T. Rep. B. R. 195., wherein the several cases alluded to were referred to, have established the practice to be, that if the party upon whom the Rule is made, do not perform what is thereby required within the time given by the Rule, the adverse party is not bound to accept a performance of the act afterwards, but may sign Judgment.

On all Special Rules given by the Master, as to reply, rejoin, &c. the party who is to do the act, must be served with a Copy of the Rule, and has four days time, exclusive of the day of service, to perform what the Rule requires; and should Judgment be signed, or other proceeding be had within that time, it will be irregular; and Sunday, or any Holiday whereon the Court does not sit, is accounted a day, unless it be the last.

ant's

ant's Attorney, who shall pay for the same according to the usual rate; but if the Attorney for the Defendant, or his Clerk in his absence, refuse to pay for such Copy, or if it shall happen, that the abode of the Defendant's Attorney be unknown to the Plaintiff's Attorney, it shall be lawful to leave such Copy with the Officer of this court appointed for filing Declarations; and Notice thereof shall, without delay, be given to such Defendant or his Attorney, and such Declaration shall be held well delivered from the time of such Notice only *.

* Vide RULES, Trin. 1 G. II. Trin. 6 G. II. and Hil. 30 G. III.

In this court it is in all cases necessary, when a Declaration be filed, to give the Defendant Notice thereof; but in the Common Pleas, if the Action require Special Bail, the Plaintiff's Attorney may, before Bail be put in, file his Declaration *de bene esse*, and need not give the Defendant Notice, it being the duty of his Attorney to search whether the Declaration be filed or not.

HILARY TERM, 2 Geo. II. 1729.

R U L E I.

[In what cases a Defendant shall not have an
Imparlanee.]

IT IS ORDERED, That when any Defendant shall be arrested by virtue of any Process out of this court, in which the cause of Action shall be specially specified and expressed, or a Copy of such Process shall be delivered to any Defendant according to the form of the statute in such case lately made and provided ; and the Plaintiff thereupon shall declare, the Defendant in such case shall not have liberty of imparling, without leave of the Court in that behalf first to be granted, but shall plead thereunto within the time allowed by the course of the court to Defendants sued by Original Writ, and for want thereof, Judgment may be entered against such Defendant by default*.

* Vide Trin. 5 & 6 G. II. Mich. 10 G. II. Stat. 5 G. II. c. 27. R. 22 G. III.

Same Term.

Notice fixed up in the King's Bench Office.

[Form of *Ac Etiam* to be inserted in Writs to hold to Bail.]

ALL Clerks and Attornies that intend to proceed according to the above Rule are to take Notice, that in suing out such Writs, they do not insert in the *Ac Etiam* the whole Declaration at length, but only describe the cause of Action shortly, according to the specimen hereunder set forth, varying the same, as the nature of the Action shall require:

Of a Plea of Trespas, and also to a Bill of the said (Plaintiff) against the said (Defendant) for 50*l.* for divers goods wares, and merchandize sold and delivered to the said (Defendant) by the said (Plaintiff), according to the custom, &c.

——— for 50*l.* as well for divers goods, wares, and merchandize sold and delivered, as for divers sums of money, laid out and expended by the said (Plaintiff),

tiff), to and for the use of the said (Defendant), and at his request, according, &c.

———As well for divers sums of money, lent and advanced by the said (Plaintiff) to the said (Defendant), as for divers sums of money had and received by the said (Defendant) to the use of the said (Plaintiff) *.

———Of a Plea that he render to the said (Plaintiff) 50*l.* which he owes to, and unjustly detains.

———Of a Plea that he keep the covenant made between the said (Plaintiff) and the said (Defendant), according to the form and effect of a certain Indenture made and executed between them.

———For that the said (Defendant), with force and arms, made an assault upon the said (Plaintiff), and beat, bruised, wounded, and ill-treated him, to the damage of the said (Plaintiff) of 50*l.*

———He promised to pay to the said (Plaintiff), or order, the sum of 100*l.* upon demand.

* Where the Action is of this nature, the *Ac Etiam* is now usually stated thus, “ And also to a Bill of the
“ said (Plaintiff) against the said (Defendant) for 50*l.*
“ upon promises.”

*The same Term.**Notice fixed up in the King's Bench Office.*

[No distinction in the time for signing Judgments in Town and Country Causes.]

PRACTISERS are to take Notice, That, for the future, no distinction as to the time of signing Judgment will be made between Town and Country Causes, but that in all cases the Plaintiff is at liberty to sign his Judgment the day after the Rules for pleading are out, Declarations having been regularly delivered and filed, and the Defendant or his Agent being called upon for a plea, according to the Rules and course of the court*.

* Though a Judgment be strictly regular, yet the Court, if the Defendant swear to merits, will, upon an application made as soon as conveniently may be, after Judgment signed, and payment of costs, set it aside, and permit the Defendant to plead issuably to the Action; and though the Judgment be irregular, yet the Defendant ought to apply to set it aside, as early as it come to his knowledge, for if he lie by, and suffer the Plaintiff to take further steps in the Cause, the Court will not afterwards relieve him.

EASTER TERM, 2 Geo. II. 1729.

[That Exception to Bail by Original be entered in the Filacer's Book.]

IT IS ORDERED, That in all Causes prosecuted by Original Writ, where Special Bail may be put in, if the Plaintiff will except against such Bail, the Exception thereto shall be entered in the Filacer's Book, and Notice thereof, without delay, given to the Defendant's Attorney, as is required in Causes brought by Bill*.

* Vide RULES, Mich. 8 Ann., and East. 5 G. II.

If an Action by Original be brought in one county, and the Plaintiff declare in another, though it be good against the Defendant, yet the Bail are discharged, and not liable upon a *Scire Facias*; 3 Lev. 235. 245.; in such case, the Plaintiff ought to issue a *Teflatum Capias* from the county wherein he means to lay his Venue, and the Bail in such case must be put in, as to Process issued into the county wherein the Plaintiff lays his Venue.

MICHAELMAS TERM, 3 Geo. II.
1729.

General Rule.

[A General Rule for the better Government of
the King's Bench Prison.]

IT IS ORDERED by the Court, That, for the time to come, the several Orders or Rules hereunder written and established pursuant to an act of Parliament, made and published in the second year of the reign of our Lord George the Second, now King of Great Britain, &c. intituled, "An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons," be well, strictly, and truly kept, as well by the Marshal of the Marshalsea of this court, and all his Officers, and Servants, as by all Prisoners who now are, or at any time hereafter shall be, committed to the custody of the said Marshal.

AND IT IS FURTHER ORDERED, That this Rule, with the aforesaid several Orders or Rules following, be fixed in the most public place within the Prison of the said

228 RULES AND ORDERS OF THE

court, commonly called the King's Bench Prison, for the use, benefit, and inspection of the Prisoners within the aforesaid Prison *.

By the Court.

Rules and Orders for the better Government of the King's Bench Prison, made and signed the 25th of November 1729.

1. **T**HAT the Marshal of the Marshalsea of this court do cause a pair of stocks to be kept up in the Prison, as has been anciently practised for the punishment of such Prisoners as shall blaspheme the Name of God, be guilty of swearing, or behave themselves in a disorderly manner.

2. That the said Marshal be and 'is hereby strictly enjoined, not to make use of any illegal means of confinement of any Prisoner in his custody, upon any pretence whatsoever, nor to confine any Prisoner in the Hole, or Room commonly called the Strong Room; or any other unusual place of restraint, nor make use of any other extraordinary means or methods for the

~~of Prisoners confined in the most~~
Vide Stat. 2 Geo. II. c. 22.
confinement

confinement of any Prisoner, unless such Prisoner shall have been found actually attempting or endeavouring to break the Prison, with an intent to escape out of the custody of the said Marshal; and every Prisoner so confined shall have liberty to appeal to this Court in Term-time, or to the Lord Chief Justice, or to any other Judge of the said court in time of Vacation, for redress.

3. That the said Marshal do not presume to sue, or procure to be sued out, any Writ of *Habeas Corpus*, to remove any Prisoner of the King's Bench to the Prison of the Fleet.

4. That the said Marshal do not presume to turn any Prisoner back from the Common Side to the Master's Side, without reasonable cause, giving such Prisoner three days notice of such his intention to remove him; during which time, the said Prisoner shall have liberty to appeal to any Judge of this court, against such intended removal; in order to prevent the same; pending which appeal, the said Prisoner shall be allowed his daily subsistence as before, and, in the mean time, his share of all dividends and other advantages shall

shall be reserved, till such appeal shall be determined.

5. That in case any Prisoner die within the said Prison, that the said Marshal shall forthwith give notice to the Coroner, in order that he may inquire, according to law, how such Prisoner came by his death.

6. That the said Marshal do take effectual care that no garnish, or other exaction, be extorted from any Prisoner or Prisoners under his custody; and do also take proper care that no Prisoner or Prisoners be deprived of his or their share, dues, and dividends, on any pretence whatsoever.

7. That the said Marshal do take effectual care that all and every Prisoner and Prisoners detained in the King's Bench Prison be permitted and suffered, at his, her, and their will and pleasure, to send for and have any beer, ale, victuals, or other necessary food from what place they please, and also to have and use such bedding, linen, and other things as he, she, or they shall think fit, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her, or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them
in

in using thereof, or relating thereto, pursuant to the several statutes in that case made and provided.

8. That the said Marshal do cause a table of Fees, as the same shall be settled and confirmed in pursuance of an act of Parliament, made in the second year of his present Majesty's reign, intituled, "An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons," and also a table of these Rules, together with a list or table of all gifts, legacies, and bequests, for the benefit of the Prisoners in the said Prison, fairly written in a plain and legible hand, to be hung up in some open and public room or place in the said Prison, there to remain to be resorted to by every Prisoner, as occasion shall require, without fee or reward, pursuant to the directions of the said act.

9. That the said Marshal do use his utmost endeavours, by all fair and legal methods, to prevent escapes; and that he, and all Officers under him, do treat the several Prisoners under his care with the utmost tenderness and humanity, as far as can be consistent with the safe custody of such Prisoners; and that neither the said Mar-

shal, nor any Officer or Servant employed by him, do demand, take, or receive, directly or indirectly, of any Prisoner or Prisoners for debt, any other or greater fee or fees whatsoever, for his, her, or their commitment, chamber room, release, or discharge, than what shall be mentioned or allowed in such list or table of Fees so to be hung up as aforesaid.

10. That the Turnkeys of the said Prison do diligently attend at the gate or door of the said Prison, as the duty of their office requires, and do admit all such persons to have access to any of the Prisoners as by law are entitled thereto.

11. That no Cellar-man, Turnkey, or other Officer or Servant of the Marshal whatsoever shall have, or pretend to have, any share or part in the charities belonging to the Prisoners, or bear any office in the said Prison which may entitle him to any power in the disposition or receipt of the said charities.

12. That the chapel be continued in the Prison aforesaid, and kept in good repair, and that the chaplain do constantly attend and perform divine service, and administer the sacraments therein, at the usual and proper

proper times, according to the rites and ceremonies of the Church of *England*.

13. That no Prisoner wrong or abuse another, upon pain of being punished, by setting him in the stocks for such time as the Marshal of this court, with the consent of the Steward and Assistants, or any two of them, shall think proper.

14. That the room commonly called the Dining-room be reserved and kept in good repair, for the use and benefit of the Prisoners, for the exercise of devotion, or for conversation, and that a fire be kept therein as often as the rigour of the season shall require; and that the two rooms under the dining-room be reserved for the use of such Prisoners as shall be afflicted with any disease or other infirmity that may require such an accommodation.

15. That every Prisoner who shall make oath, before one of the Judges of this court, or a Commissioner empowered by this Court, or one of the Justices of the Peace for the county of *Surry*, that he or she cannot command five pounds, and cannot subsist without the assistance of the charities belonging to the Common Side, shall immediately be admitted to the said Common

234 RULES AND ORDERS OF THE

mon Side, and also be capable of being elected into all offices, and entitled to all shares, dividends, and profits belonging to the same.

16. That no person committed for any criminal matter shall have any vote or suffrage in the electing a Steward or other Officer of the Common Side, nor shall receive any share of the charities belonging to the said Prison, other than his share of such profits and advantages as shall arise from the baskets.

17. That every Prisoner shall be admitted to lodge in a cabin within the respective ward to which he or she shall belong, without fee or reward.

18. That every Prisoner shall be capable of being chosen in his turn an Assistant, and be entitled to such allowances and other advantages which, by the usage of the said Prison, such Assistants have heretofore usually received and enjoyed.

19. That the seal belonging to the Common Side of the said Prison be kept by the Master of the King's Bench Office, as of late it hath been ; and that the said seal be not affixed to any receipt or other instrument

instrument till the same be approved and signed by the Marshal, with the consent of the Prisoners of the said Common Side signified under the hand of their Steward and Assistants.

20. That if any Prisoner on the Common Side of the said Prison be charged with one Action only, and such Action be superseable, that the same be superseded with the money belonging to the Prisoners of the said Common Side, by their consent signified under the hands of their Steward and Assistants, and signed by the Marshal; but in case any Prisoner be charged with more than one Action, such Actions shall not be superseded with the money belonging to the said Prisoners, unless an order for that purpose be obtained upon application to this Court in Term-time, or to the Lord Chief Justice or one other of the Judges of this court in Vacation; and that no Clerk to any of the Judges of this court shall demand or take any fee or reward, on account of superseding any such Action or Actions with the said Prisoners' money, or for any matter or thing relating thereunto,

21. That

236 RULES AND ORDERS OF THE

21. That particular care be taken of Prisoners of the Common Side who at any time shall happen to be sick, and that all proper necessaries shall be provided for them by the Steward and Assistants, and that they be reimbursed out of the first county-money.

22. That whatsoever debts are reasonably contracted by the Steward and Assistants, with the concurrence of the Marshal and Master of the King's Bench Office, for the necessary support of the Poor Prisoners, the same shall be entered by the Steward and Assistants for the time being in their house-books, and paid out of the next dividend.

23. That no money shall be allowed to the Steward and Assistants on pretence of their sitting on house-business, or adjusting differences between Prisoner and Prisoner.

24. That any Prisoner that comes into the said Prison after the first day of Easter-Term shall have but one quarter of Midsummer dividend.

25. That all money brought to the Prison by the Basket-man, and their boxes, as also such money as is brought for the Prisoners

Prisoners use and relief by the boxes which come in at Christmas, Easter, and Whitsuntide, be immediately divided to each Prisoner, in due shares and proportions, making the Basket-man such reasonable satisfaction for his trouble as hath been heretofore usually allowed.

26. That in case the said Marshal, in aid of the said Steward and Assistants, shall advance any money for superseding any Action or Actions against any Prisoner or Prisoners as is hereinbefore directed, the said Marshal shall stand in the place of the said Steward and Assistants, and be accordingly reimbursed out of the next county-money.

27. That the Prisoners of the Common Side have full power to make a free and open election of a Steward every year, and that no Prisoner who hath the liberty of the Rules, or liberty to go out of the Walls of the said Prison, shall have any vote in the election of such Steward, or of any any other Officer of the Common Side of the said Prison; and that such Steward so elected shall continue in the said Office for the space of one year, unless removed upon application made to the said Court
in

in Term-time, or in time of Vacation to the Judges thereof.

28. That the Steward of the Common Side of the King's Bench Prison do keep a book or register, wherein shall be entered a copy of the Table of Fees hereinbefore directed to be hung up in the said Prison, together with a copy of these Rules and Orders, and also a list of the several charities belonging to the said Prison; for the use of the said Prisoners; and that every Prisoner have liberty, at all convenient times, to inspect the said book, and also the Steward's accounts.

29. That if any Prisoner be wronged or abused by the Steward and Assistants, or any of them, of his or her rights and dues, that he or she complaining to the Court in Term-time, or in time of Vacation to the Lord Chief Justice, or to any of the Judges of the court, or to the Marshal of the said court, shall (provided they prove the cause of their complaints to be true) have a reasonable allowance made them for their costs and charges upon the said complaints, to be paid out of the next dividends belonging to the Steward and Assistants, or such of them who shall appear to

to have wronged such person complaining ; or, if the complaint prove groundless, that the person complaining do in like manner make satisfaction for such groundless complaint out of his share of the next dividend.

30. That if any of the Assistants, or the Steward, shall mis-spend or waste, or by any ways or means lavishly consume the house money, that the next Assistants, or any succeeding them, may call the former to account for the same, and, upon plain proof of the aforesaid mis-spent money, cause all the dividend or dividends, as well at the grate as otherwise, to be taken, stopped, and kept for reparation of the injury done to the Prisoners in general, and to be put into the house box, until equally divided to each Prisoner in their due shares and proportions.

31. That the Steward and Assistants do cause these Orders to be read every third Monday at the first basket, being the usual day for choosing the officers and settling the house accounts.

32. That the Marshal of this court, and all his Officers and Servants, and all Prisoners within the said Prison do strictly and punctually

punctually observe and keep the several Rules, Orders, and Directions hereinbefore mentioned, under pain of incurring the utmost punishment that by law can be justly inflicted upon them respectively.

33. Lastly, IT IS HEREBY STRICTLY ORDERED AND ENJOINED, That no Clerk, Officer, or Servant whatsoever belonging to any Judge of this court, shall directly or indirectly, demand, receive, or take any gratuity, fee, or reward whatsoever, for or by reason of any petition, complaint, or application, that shall be made to any Judge of this court, by any Prisoner or Prisoners of the said Prison, pursuant to, or founded upon, any of the Rules and Orders hereinbefore mentioned.

R. RAYMOND.

JA. REYNOLDS.

E. PROBYN.

December 17, 1730. 4 Geo. II.

[Fees to be taken at the King's Bench Prison.]

Surry, } **A** TABLE of Fees to be taken by
to wit: } the Marshal of the King's
Bench Prison in the county of *Surry*, for
any Prisoner or Prisoners' Commitment or
coming into Gaol; or Chamber-room there,
or Discharge from thence, in any Civil Ac-
tion; settled and established the 17th day
of December, in the fourth year of the
reign of his Majesty King *George* the Se-
cond, *anno Dom.* 1730, pursuant to an Act
for the Relief of Debtors, with respect to the
Imprisonment of their Persons:

	£.	s.	d.
1. To the Marshal, for every Prisoner com- mitted on any Civil Action,	0	4	8
2. To the Turnkey on the Master's Side,	0	1	6
3. To the Marshal, on the Discharge of every Prisoner,	0	7	4
4. To the Deputy Marshal, upon the Discharge of any one or more Actions, Executions, or other Charge, and no further Fee, though there be never so many Actions,	0	4	0
5. To the Clerk of the Papers, for the first Action upon the Discharge,	0	3	0
R 6. To			

242 RULES AND ORDERS OF THE

	<i>l.</i>	<i>s.</i>	<i>d.</i>
6. To the Clerk of the Papers, for every Action, Execution, or other Charge, to be paid on the Discharge, -	0	0	4
7. To the Deputy Marshal, upon the Commitment of a Prisoner in Court, or at a Judge's Chamber, in any Civil Action, if carried to the King's Bench Prison, -	0	1	0
8. To the Clerk of the Papers, for the same, -	0	1	0
9. To the said Deputy Marshal, for a Surrender in Discharge of Bail, be there never so many Actions, -	0	1	0
10. To the Clerk of the Papers, for every Action upon such Surrender, -	0	0	6
11. To each of the four Tipstiffs, <i>2s. 6d.</i> for each person committed by the Court, and carried to the King's Bench Prison—in the whole, -	0	10	0
12. To the Tipstaff that carries any Prisoner committed at a Judge's Chambers to the said Prison, -	0	6	0
13. To the Marshal, for the use of Chamber, Bed, Bedding, and Sheets for each Prisoner, if provided by the Gaoler at the Prisoner's request, for the first night on the Common Side of the said Prison, -	0	0	6
14. For the like use every night the Prisoner remains in custody after the first, -	0	0	1½
15. And if two lie in one bed, one penny each, -	0	0	2
16. For the like use of every Prisoner that goes on the Master's Side the first night, -	0	0	6
17. For the like every night after the first, -	0	0	3
18. And if two lie in a bed, two-pence each, -	0	0	4

No

No other Fees for the use of Chamber, Bed, Bedding, or Sheets, or upon the Commitment or Discharge of any Prisoner in any Civil Action.

AR. ONSLOW.

ED. BARKER.

N. HARDINGE.

R. RAYMOND.

R. EYRE.

EASTER TERM, 4 Geo. II: 1731:

[When a Prisoner gives a Warrant of Attorney to confess Judgment, an Attorney on his behalf must be present.

“ THE Court, taking notice of the great
 “ inconveniencies arising from holding
 “ a Warrant of Attorney to confess Judgment by a person in custody to be good,
 “ if any Attorney (though for the opposite party) be present,” ORDER, That, in future, an Attorney on behalf of the Defendant be present upon the execution of
 R. 2 every

every such Warrant of Attorney*. Vide
2 Str. 902.

EASTER, 5 Geo. II. 1732.

[Within what time Bail must justify after Exception.]

IT IS ORDERED, That in every Action in this court where Special Bail is put in, and an Exception entered against the said Bail, and Notice of such Exception is given in writing to the Defendant's Attorney, the Defendant shall procure his said Bail to justify, if the Notice be given in

* Vide RULE, East. 15 Car. II. and the notes thereto.

The Court set aside a Judgment entered upon a Warrant of Attorney given in *Ireland* by the Defendant, whilst in custody on mesne Process at the suit of the Plaintiff, because no Attorney was present at giving it in pursuance of the above Rule; and said it was an universal Rule, that a Plaintiff, if he will make use of this court, must conform to its Rules, and compared it to the stamping foreign Deeds before they can be read here. *Fitzgerald v. Plunkett*, 2 Str. 1247.

Term-

Term-time, in four days after such Notice, or shall add other Bail who shall justify within four days; but if such Exception be entered in Vacation-time, and Notice thereof be given in-like manner, the Bail put in, or other additional Bail, shall justify upon the first day of the subsequent Term *.

By the Court.

* Vide RULES, Mich. 16 Car. II., 8 W. & M. 1696, 8 Annæ, R. 2., E. 2 Geo. II., and 22 G. III., and the notes thereto.

In an Action against husband and wife, if the wife only be arrested, the Court will discharge her upon Common Bail; but if the husband be arrested in such Action, he shall put in Bail, as well for his wife as himself, before he shall be discharged; so if a feme covert be the only Defendant, it is generally true, that she shall be discharged upon Common Bail; but if it appear she obtained credit by fraud, as by pretending herself single, the Court will not discharge her upon Common Bail, but leave her to plead her coverture; *Pearson v. Meadon*, 2 Black. Rep. 903. *Partridge v. Clarke*, 5 T. Rep. B. R. 194.

The Plaintiff's Attorney must give two days Notice of Justification, exclusive of the day whereon such Notice be given; but if the same persons who became Bail above, be the Bail intended to justify, Notice having been already given to the Plaintiff's Attorney, and he having, by entering his exception, admitted his making inquiry as to their sufficiency, and being prepared to oppose the Justification, if he intend so to

The same Term.

R U L E II.

[Bail liable only for the Sum indorsed on the Writ, or less, if a less Sum be recovered.]

IT IS ORDERED, That, where the Plaintiff declares for or recovers a greater sum than is expressed in the Process on which he declares, the Bail shall not be discharged, but be liable to so much as is sworn to and indorsed on the said Process, or for any lesser Sum which the Plaintiff in such action shall recover ; any Rule of this court to the contrary notwithstanding *.

By the Court.

do, one day's Notice of Justification is in such case sufficient.

If the Exception be entered, and Notice thereof given so late, that four days do not remain of the Term, or if it be in Vacation, the Defendant must justify his Bail upon the first day of the following Term, in which cases it is sufficient if he give Notice of Justification two days before the commencement of the Term.

• Vide RULE, Trin. 22 Car. II.

A Defendant's Bail, if sued upon their Recognizance, are liable only to the debt sworn to, and costs;

Jackson

Same Term.

RULE III.

[*Scire Facias* to be left in the Sheriff's Office,
four days before the return.]

IT IS ORDERED, That, from and after the last day of this Term, every Writ of *Scire Facias*, of which Notice shall be given to the Defendant or Defendants named in such Writ, shall be delivered to, or left in the Office of the Sheriff to whom directed, four days before the return of such Writ, exclusive of the day of which such Writ is returnable,

Jackson *v.* Haffel, Doug. 329. Peterkin *v.* Sampson, B. R. Mich. 25 G. III. Sheddon *v.* Carnes, B. R. 29 G. III. Martin *v.* Moore, 2 Str. 922.; but Bail to the Sheriff are liable to the extent of the penalty in the Bail bond, to satisfy the full debt and costs, although by Stat. 12 G. I. c. 29. the Sheriff cannot take the Bond in a penalty of more than double the sum sworn to; Mitchell *v.* Gibbons, C. B. 29 G. III., H. Black. 76. So the Sheriff, upon an Attachment for not bringing in the body, is liable to the whole debt and costs; Fowles *v.* Mackintosh, C. B., E. 29 G. III. H. Black. 233.

Vide note to RULE, Trin. 1 Annæ.

And that every first Writ of *Scire Facias*, on which a *Nihil* shall be returned, shall be delivered to, or left in the Office of the said Sheriff some time before the return of such Writ; and that every Writ of *Alias Sci. Fac.* shall be delivered to, or left in the Office of the Sheriff four days exclusive, before the return of such Writ; and every Sheriff shall write or indorse on every such Writ, the day of the month on which the same is delivered to him, or left in his Office*.

By the Court.

* To all Writs of *Scire Facias* the Defendant may appear and plead; but in no case can he avail himself of any act done after the suing forth of the Writ, except in the case of Bail, who, by surrendering the Defendant in due time after the return, may exonerate themselves: wherefore this, and all other Rules of Practice which distinguish the *Scire Facias* from other Writs, either in *teste*, return, or execution, apply only to Writs of *Scire Facias* issued against Bail; *Millar v. Yarroway*, 3 Burr. 3723.

In proceeding by *Scire Facias* against Bail upon their Recognizance, the following determinations in matters of Practice relating thereto must be particularly attended to; for, should any irregularity arise, the Court will not permit the Plaintiff to amend, but he must move to quash his own Writ, and proceed *de novo*; *Bond v. Turner*,

TRIN. TERM, 5 & 6 G. II. 1732.

[When Defendant shall plead, or Plaintiff sign Judgment.]

IT IS ORDERED, That upon all Proceſs to be ſued out of this court, returnable the firſt or ſecond return of any Term, if the Plain-

Turner, 8 Mod. Rep. 305. Gray v. Jefferſon, 2 Str. 1165.

If the Action be by bill, there muſt be eight days between the *teſte* and return of the *Ca. Sa.* iſſued againſt the principal; Ball v. the Bail of Ruſſel, 2 Raym. 1177.; if by Original, fifteen days; and in both caſes, the Writ muſt lie in the Sheriff's Office four days excluſive before the return, 2 Salk. 599.

The *Scire Facias* ought not to bear *teſte* before, but it may be teſted upon the return-day of the *Ca. Sa.*; Stewart v. Smith, 2 Str. 866.

If two *Scire Facias* iſſue, whereupon the Sheriff return *Nihil*, there muſt be fifteen days incluſive between the *teſte* of the firſt and return of the laſt; per Holt, Ch. Juſ. 7 Mod. Rep. 40. 2 Jones, 228., 2 Salk. 599., 12 Mod. Rep. 215.; but regard need not be had to the number of days between the *teſte* and return of each, 2 Str. 1139., nor to the number of days for the firſt *Scire Facias* lying in the Sheriff's Office; the Rule in ſuch caſe only requires, that

Plaintiff declares in *London* or *Middlesex*,
and the Defendant lives within twenty
miles

that the first *Scire Facias* shall be left in the Office of the Sheriff some time before the return.

If only one *Scire Facias* issue, whereupon the Sheriff return *Scire Feci*, it is sufficient if there be four days exclusive between the *teste* and return; *Bell against Jackson* and another, *Bail of Stirling*, 4 T. Rep. B. R. 663.

The *Alias Scire Facias* ought not to be sued out before the first be returned, and should be tested upon the return day of the first; *Andrews against Harper*, 8 Mod. Rep. 217. Anonymous, *ibid.* 7. 40.

If the Action be by Original, all Writs issued for the purpose of proceeding against the Bail, ought to have fifteen days inclusive between the *teste* and return of each; 2 Str. 765.

If Bail be summoned upon a *Scire Facias* at so late a period of the return, that it be impossible to surrender the Defendant within the return, and they do it as early as may be after receiving the Summons, should the Plaintiff afterwards proceed against the Bail, the Court will set aside such Proceedings, and the Sheriff's return of *Scire Feci* shall not estop the Bail from shewing the fact of their being summoned so late; *Webb against Harvey* and another, 2 T. Rep. B. R. 757.

If only one *Scire Facias* issue, it must lie in the Sheriff's Office the last four days of the return; and if two, the first must lie there some time before the return,

miles of *London*, the Declaration shall be delivered, with Notice to plead, within four days after the delivery thereof, and the Defendant shall plead within the said four days without any Imparlance; and, in case the Plaintiff declares in any other county, or the Defendant lives above twenty miles from *London*, the Declaration shall be delivered, with Notice to plead, within eight days after the delivery thereof, and the Defendant shall plead within the said eight days without any Imparlance; and, on default of pleading as aforesaid, the Plaintiff may sign his

turn, and the *Alias* the last four days of the return; and it is not sufficient that it have lain there four days, unless it be the last four days; *Forty v. Hermet*, 4 T. Rep. B. R. 583.

On a Recognizance taken in the King's Bench, the *Scire Facias* must be brought in *Middlesex*, for it becomes obligatory by being entered of Record in the court; but, in the Common Pleas, the *Scire Facias* may either issue into *Middlesex* where the Recognizance is filed, or into the county where the Caption was; but, in such case, the Record should set forth the place of the Caption; 1 Cro. 312. Hob. 195. 2 Salk. 600.

If the Defendant die before the return of the *Ca. Sp.* the Bail are thereby discharged; if afterwards, they continue liable; *Williams v. Vaughan*, Cro. Jac. 97. *Timperley v. Coleman*, Cro. Jac. 165.

Judgment;

Judgment; any Rule of this Court to the contrary notwithstanding*.

By the Court.

MICHAELMAS TERM, 6 Geo. II.

1732.

[Sheriffs to return Writs, and bring Defendants into court, as directed by Rule, or Attachment to issue.]

NOTICE IS HEREBY GIVEN to all Sheriffs and Under-Sheriffs, That upon being served with a Rule peremptorily to return any Writ issued out of this court, or to bring in the body of any Defendant within six days after Notice, if the same be not done in the said time, they will be liable to an Attachment without further Rule as heretofore †.

* Vide RULES, Trin. 1 G. II., Hil. 2 G. II., Mich. 19 G. II., and Trin. 22 G. III., and the notes thereto.

† Vide RULE, 32 G. III., and Trin. 31 G. III.

MICH. TERM, 9 Geo. II. 1735.

Notice fixed up in the King's Bench Office.

[No Affidavit sworn before a Commissioner for taking Affidavits to be read, unless filed, and a Copy thereof made by the Clerk of the Rules.]

“ THE Court, having declared that no
 “ Affidavit sworn before a Commis-
 “ sioner in the country ought to be or
 “ shall be at any time hereafter read in
 “ court, or before the Master, but that every
 “ such Affidavit ought first to be filed, and a
 “ Copy thereof made, and such Copy
 “ read,” IT IS DESIRED, That all such
 Affidavits be brought to the Clerk of the
 Rules of this court to be filed, in such con-
 venient time, that Copies of them may be
 duly made and delivered to the party filing
 the same *.

* Affidavits made before Commissioners, are by Stat. 29 Car. II. c. 5. directed to be filed; as a requisite to their being used.

Vide RULE, Eas. 31 G. III. R. 2., respecting Affidavits sworn by illiterate persons.

MICHAELMAS TERM, 10 Geo. II.

1736.

RULE I.

[Declaring by the bye.—Filing Common Bail;
see Stat.]

“ A GENERAL RULE for settling and de-
 “ claring the Practice of this court,
 “ touching declaring by the bye in cases
 “ where the Plaintiff in any Action or
 “ Suit hath filed or shall file Common
 “ Bail for the said Defendant, pursuant to
 “ the late act of Parliament for preventing
 “ frivolous and vexatious Arrests ;” It is
 ORDERED, That, in all such cases, the Plain-
 tiff in such Action or Suit, wherein Com-
 mon Bail hath been or shall be so filed as
 aforesaid, may deliver a Declaration by the
 bye against such Defendant, in like man-
 ner as might have been done by the ancient
 course of this court ; but that no other per-
 son, except such Plaintiff, is or shall be ca-
 pable of delivering a Declaration by the bye
 against any Defendant, by reason of Common
 Bail being so filed as aforesaid. And, for
 the

the better distinguishing by whom Common Bail shall have been filed in any Action or Suit, IT IS FURTHER ORDERED, That from and after the last day of this Term, in all cases where Common Bail shall be filed by the Plaintiff for the Defendant by virtue of the said act, these words shall be written on the Bail-piece, "filed according to the Statute," or words to the like effect*.

By the Court.

* Vide the notes to RULE, Trin. 22 G. III.

The Plaintiff cannot file Common Bail for the Defendant, according to the Statute, after the end of the next Term following that wherein the Writ be returnable; and if he wait until he become entitled to file Common Bail, before he declare, he must, in such case, bring the Defendant into court, and declare in chief; *Smith v. Painter*, 2 T. Rep. B. R. 719.

The same Term.

R U L E II.

[Of declaring *de bene esse*.]

IT IS ORDERED, That from and after the last day of this Term, upon all Proceſs to be iſſued out of this Court, returnable the firſt or ſecond return of any Term, where no Affidavit ſhall be made and filed of the cauſe of Action, purſuant to the late act of Parliament for preventing frivolous and vexatious Arreſts, the Plaintiff may deliver the Declaration, *de bene eſſe*, at the return of ſuch Proceſs, with Notice to plead in eight days after the delivery thereof; and if the Defendant doth not file Common Bail, and plead within the ſaid eight days, the Plaintiff having filed Common Bail for ſuch Defendant according to the ſaid act, may ſign Judgment for want of a plea, a Rule to plead being duly entered. AND IT IS FURTHER ORDERED, That from and after the laſt day of this Term, upon all Proceſs to be iſſued and made returnable as afore-

said, where an Affidavit shall be made and filed of the cause of Action, pursuant to the said act, the Declaration may be delivered *de bene esse*, at the return of such Process, with Notice to plead in four days after such delivery, if the Action be laid in *London* or *Middlesex*, and the Defendant lives within twenty miles of *London*, and in eight days if the Action be laid in any other county, or the Defendant lives above twenty miles from *London*. And if the Defendant puts in Bail, and doth not plead within such time as is respectively before-mentioned, Judgment may be signed, a Rule to plead being duly entered*.

By the Court.

* Vide RULE, 22 G. III. and the Notes thereto.

Same Term.

RULE III.

[Copies of Declarations to be delivered to and paid for by the Defendant's Attorney, before he pleads.]

IT IS ORDERED, That from and after the last day of this present Term, in all Causes depending in this court, the Defendant's Attorney shall receive and pay for a Copy of the Declaration, whether the same be delivered by the Plaintiff's Attorney, or left in the Office before the Defendant be permitted to plead.

By the Court.

TRINITY TERM, 10 & 11 Geo. II.

1737.

[Entering Records for Trial at *Nisi Prius* at the Affizes.]

“ TO prevent delays in the Trial of
 “ Causes in the Circuits,” IT IS ORDERED by all the Judges of England, That, in every Cause to be tried before them in
 their

their respective Circuits, the Writ and Record shall be entered together, and that no Record shall be received without the Writ *.

W^m. LEE.

E. PROBYN.

J. WILLES.

J. COMYNS.

JA. RAYMOND.

J. FORTESCUE, A.

F. PAGE.

W. THOMPSON.

ALEX. DENTON.

W. FORTESCUE.

LAW. CARTER.

TRINITY TERM, 12 G. II. 1738.

[Parchment Rolls.]

“ COMPLAINT having been made to the
 “ Lord Chief Justice of this court,
 “ by *Samuel Billingsley*, Stationer, that se-
 “ veral persons presume to deliver out the
 “ Rolls of this court without any appoint-
 “ ment for that purpose,” THIS IS THERE-
 FORE TO GIVE NOTICE, That, from and
 after the end of this present Trinity Term,
 no Roll or Rolls shall be received and al-
 lowed for by the Clerk of the Treasury of

• Vide RULES, Hil. 14 G. II., and Hil. 33 G. III.

262 RULES AND ORDERS OF THE

this court, unless the said Rolls are marked with the said *Samuel Billingsley's* mark.

TRINITY TERM, 13 G. II. 1739.

[Claim of the Bishop of *Ely* to the execution or Writs in his Franchise of *Ely*.]

TAKE NOTICE, That I *Robert*, by divine permission, Lord Bishop of the Royal Franchise of *Ely*, the Liberty of the Bishop of *Ely*, claim the execution of all Process and return of Writs within the Royal Franchise of *Ely*, in the Isle of *Ely*, and county of *Cambridge*; and I have constituted *Edward Partherishe* of *Ely* in the said Isle and county, Esq. my Bailiff, to execute the said Process, and make returns thereof in his name: and that in case you make out any Writ or Writs of *Non Omittas*, directed to the Sheriff of the said county, in order to enter my Liberty of *Ely*, without first issuing previous Process to warrant the same, and a *Mandavi Ballivo* returned thereon by the said Sheriff, and filed, I will commence one or more Action or Actions against

against you for the same. Given under my
hand, this 28th day of June 1739,

R. ELY.

To *Edward Ventris Esq.* Chief-Clerk
of the Court of King's Bench.

MICH. TERM, 14 Geo. II. 1740.

RULE I.—A GENERAL RULE.

[No Attorney to be Bail.]

IT IS ORDERED, That no Attorney of
this court, or any other court, shall be
Bail in any Action or Suit depending in this
court*.

By the Court.

* Vide RULE, 1654, Sec. 1., and the Notes thereto.

Same Term.

RULE II.—A GENERAL RULE.

[No Sheriff's Bailiff to be Bail.]

IT IS ORDERED, That no Sheriff's Officer, Bailiff, or other Person concerned in the execution of Process, be permitted to be Bail in any Action or Suit depending in this court*.

By the Court.

HILARY TERM, 14 Geo. II. 1740.

[Trials at *Nisi Prius* in the Circuits,]

“ **W**HEREAS, for regulating Trials by
 “ *Nisi Prius* in the Circuits, an Order
 “ was made by all the Judges of England,
 “ in Trinity Term, in the 10th and 11th
 “ years of his present Majesty, that, in
 “ every Cause to be tried before them in
 “ their respective Circuits, the Writ and
 “ Record should be entered together, and

* Vide RULE, 1654, Sec. 1., and the Notes.

“ that

“ that no Record should be received with-
 “ out the Writ, which Order hath not fully
 “ answered the intent thereof; but, not-
 “ withstanding many inconveniences do
 “ still happen to the Suitors, by delaying
 “ or putting off the Trials of their Causes,
 “ now, in order more effectually to prevent
 “ these inconveniences for the future,” It

IS ORDERED by all the Judges of England,
 That no Writ and Record of *Nisi Prius*
 shall be received at the Assizes in any coun-
 ty in *England*, unless they shall be deliver-
 ed to be entered with the Marshal, before
 the first sitting of the Court after the Com-
 mission-day, except in the counties of *York*
 and *Norfolk*, and there the Writs and Re-
 cords shall be delivered to and entered with
 the Marshal, before the first sitting of the
 Court on the second day after the Commis-
 sion-day, otherwise they shall not be re-
 ceived; and that every Cause shall be
 tried in the order in which it shall be so
 entered, without any preference or delay,
 unless it shall be made out, to the satisfac-
 tion of the Judge in open court, that it is
 impracticable or inconvenient so to do, who
 thereupon may make such Order for the
 Trial of the Cause so put off as to him

shall seem meet. AND IT IS FURTHER ORDERED, That a list of the Causes when so entered as aforesaid shall be made by the Marshal, and forthwith fixed up in some public place in the *Nisi Prius* court, there to remain during the whole time of the Assizes*.

W. LEE.

W. FORTESCUE.

J. WILLES.

T. PARKER.

E. PROBYN.

M. WRIGHT.

F. PAGE.

JA. REYNOLDS.

LAW. CARTER.

THO. ABNEY.

J. FORTESCUE, A.

EASTER TERM, 15 Geo. II. 1742.

RULE I.—GENERAL RULE.

[In all Writs issued against Bail on their Recognizance, an *Ac Etiam* to be inserted.]

“ WHEREAS, by the Rules of this court,
 “ in Actions of Debt upon any Re-
 “ cognizance of Bail by Mesne Process, the

* Vide RULE, Hil. 33 Geo. III.

“ Bail

" Bail are allowed eight days in full Term,
 " after the return of the Procefs sued out
 " and served upon any of them, to surren-
 " der the Defendant in the Original Action,
 " for the discharging him or themselves
 " from such Recognizance: AND WHERE-
 " AS, by the course of this court, the Plain-
 " tiff, suing out a Writ in a Plea of Tres-
 " pass, may declare in any Action he thinks
 " fit, which may be a surprise on such
 " Bail:"—THIS COURT DOTN THERE-
 " FORE ORDER, That from and after the
 " last day of this Term, in all such Writs or
 " Procefs to be sued out of this court upon
 " any such Recognizance of Bail, after the
 " words, " in a Plea of Trespass," there
 " shall be inserted the following clause;
 " and also to a Bill of the said Plaintiff
 " against the said Defendant in a Plea of
 " Debt upon Recognizance, according to
 " the custom of our court, before us to be
 " exhibited," otherwise the Defendant or
 " his Attorney shall not be bound to accept
 " a Declaration in Debt upon such Recogn-
 " nizance.

By the Court.

Same Term.

RULE II.—GENERAL RULE.

[Affidavits, whereon to sue out Process to hold a Defendant to Bail, may be made before Commissioners who are concerned as Attornies for the Plaintiffs.]

“**W**HEREAS the swearing Affidavits before Commissioners authorized to take Affidavits in this court, in Causes wherein such Commissioners are concerned as Attornies for the Parties on whose behalf such Affidavits are made, is and hath been disallowed as irregular, which, with respect to Affidavits made of the cause of Action, before Process sued out in order to hold the Defendants to Bail, hath been found inconvenient ;”

IT IS THEREFORE ORDERED, That, from and after the last day of this Term, all Affidavits of any cause of Action, before Process sued out to hold Defendants to Bail, may be sworn before any Commissioner authorized to take Affidavits, although such Commissioner be concerned as Attorney for the

the Plaintiff, and shall be deemed to be regularly taken *.

By the Court.

The same Term.

RULE III.—GENERAL RULE.

[In order to detain a Defendant, already a Prisoner, Affidavit of the Debt to be made and filed.]

“ **F**OR preventing the detainer of Prisoners charged by Declarations in the custody of the Marshal of the Marshalsea of this court, where the cause of Action against such Prisoner doth not amount to “ 10*l*.” IT IS ORDERED, That, from and after the last day of this Term, no Declaration, whereby any Prisoner shall be charged in the custody of the Marshal, shall be

* Vide RULE, East. 31 G. III., respecting Affidavits made by illiterate persons; and Mich. 9 Geo. II. respecting the filing Affidavits sworn before Commissioners.

sufficient

sufficient cause of detaining such Prisoner in custody, unless an Affidavit that the Plaintiff's cause of Action against such Prisoner does amount to 10*l.* or upwards shall be first made and filed with the Clerk of the Rules of this court, and the sum specified in such Affidavit shall be indorsed by him upon such Declaration before leaving thereof with the Turnkey.

By the Court.

*Notice fixed in the King's Bench Office,
Mich. Term, 17 Geo. II. 1743.*

[When Causes to be entered for Trial in *London*
and *Middlesex*.]

NOTICE IS HEREBY GIVEN, That, from and after the last day of Michaelmas Term 1743, no Record or Writ of *Nisi Prius* will be received at any sitting after Term in *Middlesex*, unless the same shall be delivered to and entered with the Marshal within two days after the last day of every Term; and that no Record or Writ of *Nisi Prius* will be received at any sitting after

after Term in *London*, unless the same shall be delivered to and entered with the Marshal the day before the day to which the sittings in *London* shall be first adjourned; and that every Cause to be tried at *Nisi Prius* in *London* and *Middlesex* shall be tried in the order in which it is entered, beginning with *Remanets*, unless it shall be made out, to the satisfaction of the Judge of *Nisi Prius* in open court, that there is reasonable cause to the contrary, who thereupon will make out such Order for the Trial of the Cause so to be put off as to him shall seem meet.

HILARY TERM, 20 Geo. II. 1746.

[Attornies, upon suing forth Attachments of Privilege, to give in a *Pracipe* to the Signer of the Writs.]

IT IS ORDERED, That, from and after the last day of this Term, every Attorney of this court, who shall sue out any Attachment of Privilege against any Defendant, shall leave a *Pracipe* with the Signer of the Writs, with the Defendants' names, not exceeding

ceding four in each Writ, with the return and day of signing such Writ, with the Agent or Attorney's name who sued out the same; and all such *Præcipes* shall be entered on the Roll where the *Præcipes* of *Latitats* and all other Writs issuing out of this court are entered; and the Officer that signs the Writs in this court shall not sign such Attachment, till a *Præcipe* be left with him for that purpose*.

By the Court.

• We have not been able to discover when first it became the practice to include several Defendants, for distinct causes of Action, in one Writ, or why this plurality was limited to four in number, unless the above Rule, which applies only to one species of Writ, should have begotten a similitude of practice in all Suits by Bill. At present the practice, as established by several determinations, is, That if a Plaintiff have several causes of Action sufficient to hold a Defendant to Bail, and which cannot be counted upon in the same Declaration as debt and *assumpsit*, he must, in order to hold the Defendant to Special Bail in each, make several Affidavits, and sue out several Writs; *Crooke v. Davis*, 5 Burr. 2690.; nor can a Plaintiff join distinct Defendants for distinct demands, either in the same Writ or in the same Affidavit; *Holland v. Johnson*, 4 T. Rep. B. R. 695.; *Gilby v. Lockyer*, Doug. 217.; but this practice extends only to bailable Process, for if the Writ be not bailable, four Defendants may be included in one Writ; *Yardley against Burgess*, Trin. 32 G. III.

*Notice fixed up in the Seal-Office, Inner
Temple-lane, 3d April, 1747.*

[No Blank Writs to be sealed.]

“ **W**HEREAS the Fees of this Office being
 “ lately very much decreased, to the
 “ manifest prejudice of the Patentee and
 “ Chief Justices of the respective courts of
 “ King’s Bench and Common Pleas, and
 “ the same appearing for some time past to
 “ be in a great measure owing to the seal-
 “ ing of Blank Writs, several of which,
 “ after sealing them, have been made *Tes-*
 “ *tatums* and *Non Omittas’s*, besides other
 “ irregularities practised thereby;” It is
 ORDERED, That, for the future, no printed
 Blanks or other Writs whatsoever be sealed
 before the same are regularly made out and
 filled up.

By Order of the Comptroller.

272 RULES AND ORDERS OF THE

MICH. TERM, 30 Geo. II. 1756.

RULE I.—GENERAL RULE.

[Rules enlarged from one Term to another, must be moved before the last week of the Term to which they are enlarged.]

THE COURT DECLARED, That all enlarged Rules to shew cause, which were made in the last Term, shall be moved before the last week of the present Term, unless leave for postponing them shall be particularly applied for and granted; and this Rule to prevail hereafter in all future Terms in the same manner. 1 Burr. 9.*

Same Term.

RULE II.—GENERAL RULE.

THE COURT DECLARED a new Order concerning *Special Causes* in the Paper: Which was, in substance, That all Causes

* Where Rules stand over from one Term to another, they are now entered in a Paper kept by the Clerk of the Rules, and come on in rotation upon the days appointed.

should come on to be argued in the *same* order that they were entered, and that they should continue to stand in the Paper in the same order, *until* they should be argued, (without being entered anew): And that no Cause should be put off, without a special application to the Court, upon some sufficient ground, before the day upon which it stood in the Paper for argument.
1 Burr. 52.

TRINITY TERM, 31 Geo. II. 1758.

THE COURT RESOLVED, That Attachments might be moved for, upon the last day of Term, in the two following cases only, *viz.* for Non-payment of Costs, and against a Sheriff for not returning a Writ. Vide 1 Burr. 651 *.

* In all cases wherein the Court be moved for an Attachment for disobedience of a Rule, the party applying must shew, by Affidavit, that a copy of the Rule was personally served upon the party against whom the application is made, and that the original Rule was at the same time shewn to him; the King *against* Smithies, 3 T. Rep. B. R. 351.; and such
T Affidavit

Affidavit is insufficient, if sworn before the Agent or Attorney of the Prosecutor; *The King against Wallace*, *ibid.* 403. Generally speaking, where it be required by Law, that Notice shall be given to a party leaving it at his house is sufficient, as in the case of an Attorney's Bill, Notice of Declaration, &c. : But it is otherwise in the case of Process to bring him into contempt, for there Personal Notice is necessary; yet, in some cases of Process, leaving it at the house is sufficient, as a *Subpoena* in Chancery, or a *Quo Minus*; *Jones, ex. dem. Griffiths, v. Marsh*, 4 T. Rep. B. R. 464. Nor is it necessary to give Notice in most cases, (unless Notice in writing be particularly required,) if it be manifest that the party have himself voluntarily taken notice; *Rice v. Kelly*, Cases Temp. Ld. Hardw. 28.

RULES AND ORDERS
OF THE
COURT OF KING'S BENCH,
TEMPORE GEORGII TERTII.

TRINITY TERM, 19 Geo. III.

Notice stuck up in the King's Bench Office.

[Defendant not entitled to *Oyer* of the Original Writ.]

THE COURT HAVE RESOLVED, That a Defendant is not entitled to *Oyer* of an Original Writ; and that, if he demand it, the Plaintiff is not obliged to take notice of such demand, but may proceed as if no demand had been made *.

* This Notice was, in consequence of a motion to set aside an interlocutory Judgment, signed after the

TRINITY TERM, 22 Geo. III.

[Of filing Declarations *de bene esse*, and when Defendants must plead.]

IT IS ORDERED, That from and after the last day of this Term, upon all Process to be issued out of this court, returnable before

Defendant's Attorney had demanded *Oyer* of the Original Writ, of which the Plaintiff's Attorney took no notice, but signed Judgment for want of a Plea : And thereupon Lord Mansfield desired the Bar to take Notice, That the practice for Defendants to crave *Oyer* of the Original, which had been so much used for delay, was not warranted by any Rule, or principle of justice ; that it was incumbent on the Court to make their proceedings as little dilatory, expensive, and oppressive as possible ; that it was unnecessary for the Defendant to see the Original after he had been informed of the cause of Action by the Declaration ; that the Court of Common Pleas had rejected the practice, (vide Barnes, quarto edit. 340.) ; and that, from thenceforth, Plaintiffs in this court may proceed as if such demand of *Oyer* had not been made ; *Boats v. Edwards*, Doug. 227.

Wherever the Plaintiff is bound to make a *Profert* the Defendant is by Law entitled to *Oyer* ; nor can the Court, upon any pretence, dispense with the giving it. *Soreby v. Sparrow*, 2 Str. 1186. Bull. Nisi Prius,

253. If

before the last return of any Term, where no Affidavit shall be made and filed of the cause

If either Plaintiff or Defendant crave *Oyer* of a *Profert* of the adverse party, and in his subsequent Pleading do not wholly set forth such *Oyer*, the Plea is a nullity, and Judgment may be signed as for want of a Plea; or, upon motion, the Court will quash it with costs, and (should this practice be used for the purpose of delay) will censure the Attorney doing it; *Wallace v. the Dukes of Cumberland*, 4 T. Rep. B. R. 370. *Ferguson, Bart. et al. v. Mackreth*, there cited.

The party of whom *Oyer* is demanded has two days, both reckoned exclusively, to deliver the copy of his *Profert*; *Page v. Divine et al.* 2 T. Rep. B. R. 40.; which if he omit, (the *Profert* being a part of the Plea wherein it is tendered,) such Plea becomes a nullity.

The party demanding *Oyer* has the same time to plead, after *Oyer* given, as he had at the time of the demand; *Parnell v. Gay*, Str. 705. *Prac. Reg.* 301. *Barnes*, 157. 185.

Oyer must be demanded the same Term wherein the *Profert* is made, and not afterwards; 1 Mod. 69.; the *King v. Amery*, 1 T. Rep. B. R. 149. The Term, to avoid entering the several continuances of business, is reckoned as one continued Law-day; therefore the Deeds pleaded shall be in the custody of the Law during the whole Term, being the day wherein they are pleaded; and, being then before the Court, anybody may take advantage of them: but since they belong to the custody of the party, if the Deed be not

cause of Action, pursuant to the Act of Parliament for preventing frivolous and vexatious Arrests, the Plaintiff may file or

denied, it shall go back to the party after the Term is over, and then nobody can take advantage of it without a new *Profert*: Therefore the Plaintiff in B. R. may take advantage of the condition of a Deed in his Replication, because it runs *et predict' A. dicit* as of the same Term; but he cannot take advantage in his Replication of a Deed in C. B., because they enter an Imparance to another Term. Bull. *Nisi Prius*, 253.

If a Judgment or matter of Record in the same court be pleaded, the party pleading the same must, on demand, give a note, in writing, of the Term and Number-roll whereon such Judgment or matter of Record is entered and filed, or, in default, the Plea is not to be received;

If the Defendant plead a dilatory or frivolous Plea, the Court, on motion, will order that he stand by his Plea, or plead such other peremptorily on the morrow as he will stand by; and, after such Rule, the Defendant can only plead the General Issue, but he may give Notice of Set-off; *Hare v. Lloyd*, 1 T. Rep. B. R. 693. *Prout v. Dewar*, *Cockran v. Robertson*, there cited.

Where the Bond, &c. is in the hands of a third person, the Court, on motion, will oblige him to give *Oyer*, and produce it; *White against the Earl of Montgomery*, 2 Str. 1198.

Oyer is given by delivering a copy on the like Stamp as the Pleadings are engrossed upon, for which the party craving *Oyer* must pay, in like manner, four-pence *per sheet*, and Stamp-duty.

deliver

deliver his Declaration *de bene esse* at the return of such Process, with Notice to plead in eight days after the filing or delivery thereof; and if the Defendant doth not file Common Bail, and plead within the said eight days, the Plaintiff having filed Common Bail for such Defendant according to the said Act, may sign Judgment for want of a Plea, provided that such Declaration be delivered or filed, and Notice thereof given four days exclusively before the end of such Term, and a Rule to plead be duly entered.

AND IT IS FURTHER ORDERED, That from and after the last day of this Term, upon all Process to be issued and made returnable as aforesaid, where an Affidavit shall be made and filed of the cause of Action pursuant to the said Act, the Declaration may be filed or delivered *de bene esse* at the return of such Process, with Notice to plead in four days after such filing or delivery, if the Action be laid in *London* or *Middlesex*, and the Defendant live within twenty miles of *London*; and in eight days, if the Action be laid in any other county, or the Defendant live above twenty miles from *London*: And if the Defendant puts in

Bail, and doth not plead within such times as are respectively before-mentioned, Judgment may be signed; provided that such Declaration be delivered or filed, and Notice thereof given four days exclusively before the end of such Term, and a Rule to plead be duly entered*.

By the Court.

* By the Rules of Easter 1657, the 16 Car. II., and 4 W. & M., R. 2., there appears to have been in practice a species of inchoative Appearance, which the Defendant's Attorney might enter before he filed his Common or Special Bail; for, by the first of these Rules, it is ordered, "That all Clerks of the Office, Filacers, and Attornies at large, within ten days after the end of every Term, do deliver to the Secondary a note of all such Appearances as have been made to them the Term before, so that he that is appointed to enter the Bails may see whether Bails be filed for every such Appearance or not:" And by Rule, 16 Car. II. it is ordered, "That every Attorney who shall appear for any Defendant, in any Action in which Special Bail is not required, shall file Common Bail for such Defendant within six days next after the end of the same Term of which he appeared:" And lastly, (so common was the omission of filing Common Bail,) by Rule, Trinity, 4 W. & M., R. 2. "The Plaintiff's Attorney is empowered, upon joining every issue, to charge the Defendant's Attorney one shilling and six-pence, to be by him paid to the Secondary for filing Common Bail, unless the Defendant's Attorney make it appear that Com-

" mon

"mon or Special Bail is filed." These Appearances were sufficient if the Defendant pleaded to the Action, for he must appear by his Plea; and, if the Action required Special Bail, the Recognizance must have been acknowledged, though afterwards neglected to be filed with, and the fee paid thereupon to the Secondary. In the latter of these cases, a remedy was provided by Rule, East. 29 Car. II., which directs the fee due to the Secondary for filing the Bail to be paid to the Judge's Clerks at the time of acknowledging such Bail; and such Clerks are directed, after every Term, to send a list of Bails put in, and pay the Secondary his fees thereupon. This Rule, therefore, applied a remedy in cases where Special Bail was required; but still, where only Common Bail was necessary, the Defendant's Attorney omitted filing it, until the Stat. of 5 W. III. c. 21. was made, which imposed a Stamp-duty of six-pence upon Common Bails, and one shilling upon all Special Bails; and thereby made Appearances and Bails convertible Terms, and reduced the practice to its present form.

The times allowed for filing Bails according to the present practice of the Court, founded upon the Rule of Michaelmas Term, 10 Geo. II. 1736, R. 2., and which (so far as respects Common Bail) was made in consequence of the Stat. 5 G. II. c. 27. for preventing frivolous and vexatious Arrests, and the Rule of Michaelmas, 8 Annæ, R. 1., are as follow: In all cases where Common Bail only is required, the Defendant has eight days, exclusive of the day whereon the Writ is returnable, to file Common Bail, or, if the Writ be by Original, to enter an Appearance.

The Rule of Michaelmas, 10 G. II., R. 2., respecting the putting in of Special Bail, though subsequent in date, is nevertheless in practice wholly superseded by Michaelmas,

282 RULES AND ORDERS OF THE

Michaelmas, 8 Ann. R. 1.; the practice now being, according to that Rule, that, "where any Defendant shall be arrested by the Sheriffs of *London* or *Middlesex*, he shall have four days (exclusive of the day of the return of the Writ) to put in Special Bail; and, if the Defendant be arrested in any other county than *London* or *Middlesex*, he shall have six days (exclusive of the day whereon the Writ is returnable) to put in Bail above."

These times for putting in Special Bail, if the Writ be by Original, must be computed from the *quarto die post* of the return; *Frampton against Barber*, 4 T. R. B. R. 377.

After Special Bail be put in, the Defendant's Attorney must immediately give Notice thereof to the Plaintiff's Attorney, who may except thereto at any time within twenty days: Vide Rules, Mich. 16 Car. II., and Mich. 8 Annæ. This Exception is made by an entry in the margin of the books, containing the entries of Bails taken at the several Judges' chambers: and a Notice thereof being served upon the Defendant's Attorney, the Bail must justify their sufficiency in four days exclusive next after such Notice of Exception, if four days remain to come of the Term; if otherwise, upon the first day of the following Term.

A Justification of Bail, is either by their Personal Appearance in court, and swearing themselves House-keepers, and worth double the sum for which the Defendant is arrested, or by Affidavit of the like facts, sworn before a Commissioner authorized to take Affidavits and Bails, and before whom the Bail was acknowledged in the country: Vide Rule, 10 W. III. R. 3. § 5. In the first of which cases, the Bail having been personally examined, and in the latter, the Affidavit made by the Bail having been read in open court,

court, if they appear sufficient, the Court make a Rule for their allowance, which must be drawn up, and a copy thereof served upon the Plaintiff's Attorney, and the Bail are thereupon complete: But, if the Defendant omit to draw up and serve the Rule, the Plaintiff's Attorney, although he oppose the Justification, and know they were allowed, may proceed as if no such Justification had taken place: *The King v. the Sheriff of Middlesex*, 4 T. Rep. B. R. 493.

At this day, it is not usual for Attornies to make Affidavit of the service of Notice of Bail, after the expiration of twenty days, and no Exception entered; and thereupon file the Bail-piece with the Secondary, according to the direction of the several Rules of Trin. 13 Car. II. Hil. 1650, and Mich. 16 Car. II.; the intention of those Rules being to compel payment of the fee due to the Master for filing the Bail-piece. But since the Rule of East. 29 Car. II., which directs the Master's fee to be paid to the Judge's Clerk, who is to account with him; and the Rule, Mich. 8 Ann. R. 2., which directs an Exception to be entered, and Notice thereof given within twenty days after Notice of Bail, otherwise that such Exception be void, it is wholly unnecessary, and therefore out of use. So also is so much of the Rule of the 8 W. III., R. 3., giving time for the transmitting of Country Bails; for, at this day, the Rule of practice is general, that the Defendant, in all Country Causes, shall have six days next after the return of the Writ to acknowledge, file, and give Notice of Bail, and no more, however distant the county in which he resides may be.

Until the Rule of Trin. 12 W. III., the practice of the Court, as is mentioned in that Rule, was for the Plaintiff's Attorney to deliver the Draft of his Declaration to the Defendant's Attorney, who made a Copy thereof

234 RULES AND ORDERS OF THE

of for his own use, and returned the Draft to the Plaintiff's Attorney; but, some inconveniences attending that practice, it was, by the above Rule, reduced to its present form, by ordering that, upon the Appearance of any Defendant, the Plaintiff's Attorney shall deliver to the Defendant's Attorney a Copy of the Declaration, for which such Attorney shall pay after the rate of four-pence per sheet, together with the Stamps; and that upon pleading or demurring thereto, (if such Plea or Demurrer be not such as ought to be filed with the Clerk of the Papers, vide Rule, Mich. 2 W. & M. 1690, and the notes thereto,) the Plaintiff's Attorney shall make up and deliver a copy of such Issue or Demurrer to the Defendant's Attorney, who shall in like manner pay for the same; and that, if any Attorney refuse to pay for the copy of any such Declaration, the Plaintiff's Attorney shall leave it in the Office with the Clerk of the Declarations; and, having given Rules to plead, may, for want of a Plea, sign Judgment; and, before any Plea shall be received, the Defendant's Attorney shall take the Declaration out of the Office, and pay for the same; and, if the Defendant's Attorney do not pay for the Issue or Demurrer, the Plaintiff may sign Judgment. And, by Rule, 5 Ann. 1706, R. 2., made in pursuance of the Stat. 4 & 5 Ann. c. 16., it is ordered, "That the Attorney for the Defendant, at the time of his Appearance, shall give the Plaintiff's Attorney the Warrant of Attorney for such Defendant; and at the time of the delivery of the copy of the Declaration, or taking it out of the Office where filed, shall pay four-pence for filing the said Warrant, which the Plaintiff's Attorney is directed to file accordingly when he files his own Warrant of Attorney; and, if the Defendant refuse to pay for filing his Warrant, the Plaintiff may sign Judgment."

ment." The practice arising upon these Rules is, that if an Attorney have appeared for a Defendant, and upon tender he refuse to accept and pay for the Declaration, the Plaintiff may file it in the Office; and when his Rule to plead have expired, if the Declaration be not taken out, although a Plea be filed, may sign Judgment; but he cannot sign Judgment, upon a tender of the Declaration, because the Defendant's Attorney refused to pay for filing his Warrant of Attorney, the four-pence charged, for that being at this day consolidated with the charge for the copy of the Declaration, must be governed by the same Rule of Practice; *Oneale v. Price*, 4 T. Rep. B. R. 370. The Rule of 5 Ann. is now obsolete; and the practice is not to deliver over any Warrants of Attorney, but for the Plaintiff, in pursuance of the Rule of Trin. 4 Jac. II., to enter the Warrants of Attorney, of both Plaintiff and Defendant, in the beginning of the Roll whereon his Pleadings are entered; and, at the time he pays for his entries, he also pays four-pence each for filing these Warrants.

When the Plaintiff declares his Attorney will be prudent in attending to the following cautions, *viz.* If the Action require Special Bail, which are yet not perfected, that his Declaration be delivered or filed *de bene esse*; for, if he declare in Chief, he waives a Justification of the Bail: So if his Declaration be delivered *de bene esse*, and he demand a Plea before the Bail perfected, for every proceeding in speed of the cause admits the antecedent part to be complete. The practice laid down in most of the books is, that if a Plaintiff declare in Chief before any Bail put in, (whether the Action require Special or Common Bail,) amounts to a waiver of Bail, and the Defendant may plead as if in custody without putting in any Bail. *Tamen quare?*

quare? For if the Defendant plead by Attorney, such Attorney must file Bail before he can plead; and though the Defendant plead in person, yet the allegation of the Declaration that the Defendant is in custody of the Marshal, being mere fiction, shall not operate to the prejudice of any one. But, if this practice were allowed, it would be in detriment of the Revenue, there being a Stamp-duty upon every Bail-piece. And, for the same reason, if Special Bail be required, though the Plaintiff, by thus delivering his Declaration, hath taken away his right to except to the Bail, yet Special, and not Common Bail, ought to be put in, for the Stamp-duty upon such Bail-pieces is more than upon Common Bails. We apprehend the practice to be, that a Declaration so delivered is a mere nullity; for, by the ancient practice of the Court, a Plaintiff could not declare until the Defendant was in court, and the Rules of Court only enable a Plaintiff to file his Declaration *de bene esse* before such Appearance. And in this opinion we are confirmed by the case of *Venn v. Calvert*, 4 T. Rep. B. R. 578.; in which, the Plaintiff having declared *de bene esse*, the Defendant pleaded before the Bail were perfected; after the Bail had justified, the Plaintiff's Attorney demanded a Plea, and signed Judgment for want of a Plea, and the Court refused to set the Judgment aside; the Plea being a nullity at the time it was pleaded, did not afterwards become a good Plea by perfecting the Bail. So in the case of *Cook v. Raven*, 1 T. Rep. B. R. 635., a demand of a Plea before the Defendant has appeared, or the Plaintiff filed Common Bail for him, is a nullity, and the Court set aside the Judgment signed under these circumstances. Vide also *Smith v. Painter*, 2 T. Rep. B. R. 719., wherein the Court determined that the Plaintiff cannot, after he is entitled to file common Bail, according to the Statute,

Statute, deliver his Declaration without first filing Common Bail, and that a Declaration so delivered is a nullity.

The Declaration must be intitled of the Term wherein the Writ is returnable, though it be not delivered till the following Term, or afterwards; for, *per Buller, Just.*, according to the ancient practice, the Declaration was actually delivered in the same Term; it was only in case of the Plaintiff that the time of actual delivery was enlarged; but still it must be considered as delivered *nunc pro tunc*; *Smith v. Muller*, 3 T. Rep. B. R. 624.: And the Rules which enable a Plaintiff to declare *de bene esse* are merely permissive, and not compulsory; so that if Bail do not justify until the Term following that wherein the writ be returnable, the Plaintiff may, in that Term, deliver his Declaration, and the Defendant is not entitled to an Imparlance; *Rolleston v. Scott*, 5 T. Rep. 372.

According to the practice of this Court, any person, as well as the Plaintiff, may, after a Defendant has appeared, by either Special or Common Bail, deliver a Declaration against him by the bye, at any time within two Terms after such Appearance, but not afterwards; vide *Smith v. Muller*, above cited. But by Rule, 10 G. II., R. 1., where Bail is filed according to the Statute, the Plaintiff filing such Bail only can deliver a Declaration by the bye: Vide also *Wallis v. Smith*, 2 Str. 1027.

If a Defendant plead in abatement, and the Plaintiff enter a Judgment *quod Billa cassetur et Defendens eat sine die*, he may, notwithstanding, at any time during the same Term, deliver a Declaration by the bye against such Defendant who is in court during the whole Term; *Milles v. Andrews, Administratrix*, 5 T. Rep. B. R. 634.

MICH. TERM, 23 Geo. III.

[What Costs a Plaintiff shall be entitled to if he proceed by Original, and recover less than 50*l*.]

IT IS ORDERED, That from and after the last day of this present Michaelmas Term, in all Actions in which the Plaintiff shall proceed against the Defendant by Special Original Writ, and shall recover less than the sum of 50*l*., he shall not, on taxing Costs, be allowed any more or other Costs than he would be entitled to in case he had proceeded by Bill, except in such Actions in which he could not proceed by Bill, or in which any Defendant shall be actually outlawed.

By the Court,

COWPER.

HILARY TERM, 26 Geo. III.

[General Rule respecting the several Proceedings
against Prisoners.]

IT IS ORDERED, That from and after the last day of this Term, in all cases where a Prisoner is or shall be taken, detained, or charged in custody by Mesne Process, hereafter returnable, issuing out of this court, and the Plaintiff shall not cause a Declaration against such Prisoner to be delivered to such Prisoner, or to the Gaoler or Turnkey of the Gaol or Prison where such Prisoner is or shall be detained or charged in custody, before the end of the next Term after the return of the Process by virtue whereof such Prisoner is or shall be taken, detained, or charged in custody; and (unless the Prisoner is or shall be in custody of the Marshal) cause an Affidavit to be made and filed with the Clerk of the Rules of this court, of the delivery of such Declaration, and of the time when, and the person to whom the same was delivered, before the first day of the next Term; after the delivery of such Declaration the Prisoner shall

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290. RULES AND ORDERS OF THE

be discharged out of custody by Writ of *Superfedeas*, to be granted by this court, or one of the Judges thereof, upon filing Common Bail, unless, upon Notice given to the Plaintiff's Attorney, good cause shall be shewn to the contrary. And in case of a Commitment or Surrender to the Marshal in discharge of Bail, after the return of the Process, and before a Declaration delivered, unless the Plaintiff shall cause a Declaration to be delivered as aforesaid, before the end of the Term next after such Commitment or Surrender shall be made, and due Notice of such Surrender given, the Prisoner shall be discharged out of custody by Writ of *Superfedeas*, to be granted as aforesaid, upon filing Common Bail, unless, upon Notice given to the Plaintiff's Attorney, good cause shall be shewn to the contrary.

AND IT IS FURTHER ORDERED, That in all cases after a Declaration delivered as aforesaid, at the King's Bench, or any other Gaol or Prison, unless the Plaintiff shall proceed to Trial, or final Judgment thereupon, within three Terms next after such Declaration delivered, if by the
course

course of the court the Plaintiff can so proceed, of which three Terms the Term wherein such Declaration shall be delivered shall be taken to be one; or in case of a Surrender, in discharge of Bail after a Declaration delivered, unless the Plaintiff shall proceed to Trial, or final Judgment thereupon, within three Terms next after such Surrender, and due Notice thereof, if by the course of this court the Plaintiff can so proceed, of which three Terms the Term wherein such Surrender shall be made shall be taken to be one, the Prisoner shall be discharged out of custody by Writ of *Superfedeas*, to be granted as aforesaid upon filing Common Bail, unless, upon Notice given to the Plaintiff's Attorney, good cause shall be shewn to the contrary. And in all cases after such Trial shall be had, or final Judgment obtained, against any Prisoner in the custody of the Marshal, or in any other Gaol or Prison, unless the Plaintiff shall cause such Prisoner to be charged in execution within two Terms next after such Trial shall be had, or final Judgment obtained, of which two Terms the Term in which such Trial shall be had, or final

Judgment shall be obtained, shall be taken to be one, in case no Writ of Error shall be depending, nor injunction be obtained for stay of Proceedings; and if any Writ of Error shall be depending or injunction be obtained, then, within two Terms next after Judgment shall be affirmed, the Writ of Error be non-prossed or discontinued, or the injunction dissolved, including the Term in which such affirmance of Judgment, *Non Pros*, or discontinuance of the Writ of Error, or dissolution of the injunction shall be obtained; or in case of a Surrender in discharge of Bail after Trial had, or final Judgment obtained, unless the Plaintiff shall cause the Defendant to be charged in execution within two Terms next after such Surrender, and due Notice thereof, of which two Terms, the Term wherein such Surrender shall be made shall be taken to be one, in case no Writ of Error shall be depending, or injunction obtained for stay of Proceedings; and if any Writ of Error shall be depending, or injunction obtained, then, within two Terms next after Judgment shall be affirmed, the Writ of Error be non-prossed or discontinued, or the in-
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junction

junction dissolved, including the Term in which such affirmance of Judgment, *Non Pros*, or discontinuance of Writ of Error, or dissolution of the injunction shall be obtained, the Prisoner shall be discharged out of custody by *Supersedeas*, to be granted as aforesaid upon filing Common Bail, unless, upon Notice given to the Plaintiff's Attorney, good cause shall be shewn, in either of those cases, to the contrary.

AND IT IS FURTHER ORDERED, That in all cases where a Prisoner shall be taken or charged in custody by any Sheriff or other Officer, by Mesne Process of this court, and shall afterwards be removed by Writ of *Habeas Corpus*, and committed thereupon by this Court, or any of the Judges thereof, to the custody of the Marshal, the time for Plaintiff's proceeding against such Prisoner shall commence and be computed from the Prisoner's being first taken or detained, or charged in custody, by virtue of such Process.

AND LASTLY, IT IS ORDERED, That no treaty or agreement shall be sufficient cause to prevent any Defendant having the benefit of a *Supersedeas* for want of prosecution, unless the same be in writing,

294 RULES AND ORDERS OF THE

signed by the Defendant or his Attorney, or some person duly authorized by the Defendant, and it be therein expressed that proceedings are stayed at the Defendant's request*.

By the Court.

* By this Rule, (which comprehends the several stages of a Suit on the part of the Plaintiff,) a Prisoner becomes superseable in the following cases, unless good cause be shewn to the contrary: *viz.*

1st, If the Plaintiff do not declare before the end of the Term next after the return of the Process whereupon the Prisoner may have been arrested.

2dly, Although the Plaintiff declare in due time, yet if he do not make, and file with the Clerk of the Rules, an Affidavit of the delivery of his Declaration, containing the time when and person to whom the same was delivered, before the first day of the next Term after the delivery thereof, the Prisoner becomes superseable; but, it being unnecessary to make such Affidavit if the Defendant be in custody of the Marshal, that case is excepted in the Rule.

3dly, In case of Surrender or Commitment of a Defendant to the custody of the Marshal, after the return of the Process, and before Declaration, unless the Plaintiff declare before the end of the next Term after such Commitment or Surrender, and due Notice thereof given, the Defendant becomes superseable.

4thly, In all cases after Declaration delivered, unless the Plaintiff proceed to Trial or final Judgment within three Terms after such Declaration delivered,
(if

(if by the course of the court, the Plaintiff have it in his power so to proceed, and of which three Terms the Term wherein the Declaration is delivered shall be accounted one,) the Defendant becomes superse-
deable.

5thly, In case of Surrender in Discharge of Bail after Declaration delivered, unless the Plaintiff proceed to Trial or final Judgment within three Terms next after such Surrender, and due Notice thereof, (if by the course of the court the Plaintiff have it in his power so to proceed, of which three Terms the Term wherein the Defendant surrendered shall be accounted one,) the Defendant becomes superse-
deable.

6thly, In all cases after Trial had, or final Judgment obtained, against any Prisoner, unless the Plaintiff cause such Prisoner to be charged in execution within two Terms next after such Trial or Judgment, (of which two Terms the Term wherein such Trial shall be had, or final Judgment obtained, shall be accounted one, in case no Writ of Error be brought, or injunction obtained; and in such case, within the like space of time next after the Judgment be affirmed, the Writ of Error non-prossed or discontinued, or the injunction dissolved, including the Term of such Affirmance, *Non Pros*, Discontinuance, or Dissolution,) the Prisoner becomes superse-
deable.

7thly, In case of a Surrender in discharge of Bail had, or final Judgment obtained, unless the Plaintiff cause the Defendant to be charged in execution within two Terms next after such Surrender, and due notice thereof, (of which two Terms the Term wherein such Surrender shall be made shall be taken to be one, if no Writ of Error be depending, or injunction be obtained; and in such case, within the like space of time next after the Judgment be affirmed, the Writ of

Error non-prossed or discontinued, or the injunction dissolved, including the Term of such Affirmance, *Non Pros*, Discontinuance, or Dissolution,) the Prisoner becomes superseadeable.

This Rule further directs, that if a Prisoner, in custody by *Mesne Process*, shall afterwards be removed by *Habeas Corpus*, and be committed thereupon to the custody of the Marshal, the time for the Plaintiff's proceeding against such Prisoner shall be computed from the time of his being first taken or detained.

And lastly, That no treaty or agreement shall be sufficient to prevent any Defendant having the benefit of a *Superseadeas* for want of prosecution, unless the same be in writing, signed by the Defendant or his Attorney, or by some person duly authorized by the Defendant, and it be therein expressed, that proceedings be stayed at the Defendant's request.

In Country Causes, and also in such as are tried at the Sittings after Term in *London* and *Middlesex*, the two Terms allowed a Plaintiff for charging the Prisoner in execution after Trial, must be computed from the Term wherein the *Disfringas Juratorum* is returnable, inclusively to the end of the following Term, after which the Defendant will become superseadeable, if not charged in execution. Thus, if a Plaintiff proceed to Trial at the Lent Assizes, the Defendant will become superseadeable immediately after the following Trinity Term, or, if at the Summer Assizes, immediately after the following Hilary Term, if not previously charged in execution; but should a Plaintiff proceed to Trial at the Sitting within Term, in *London* or *Middlesex*, the Defendant must be charged in execution in the following Term, or he will become superseadeable.

If

If a Defendant, in custody, file his Plea with the Clerk of the Papers, or enter it in the General Issue-book, before any Plea be due; for example, if the Declaration be delivered so late in Term that the Plaintiff is not entitled to a Plea until the following Term; but if the Defendant voluntarily plead the same Term, unless he give notice thereof to the Plaintiff's Attorney, such Plea is a nullity; *Thomas v. Pritchard*, 4 T. Rep. B. R. 664. *Rusholm v. Chapman*, 5 T. R. B. R. 473.

Although it become impossible for the Plaintiff to proceed to Trial within the time directed by the Rule, yet the Defendant is not supersedeable until three Terms have fully elapsed. Same case.

By Stat. 4 & 5 W. & M. c. 21. if any Defendant be taken or charged in custody at the suit of any person, upon any Writ out of the courts at *Westminster*, and imprisoned for want of sureties, the Plaintiff may, before the end of the next Term after such Process shall be returnable, declare against such Prisoner in the court out of which the Writ shall issue, and shall cause a copy thereof to be delivered to such Prisoner, or to the Gaoler in whose custody such Prisoner shall be; and if such Prisoner shall not appear and plead to the same, the Plaintiff shall have Judgment, as if the Prisoner had appeared and refused to plead.

And, by sec. 3., in all Declarations against such Prisoner, detained by virtue of any Writ issued out of the court of King's Bench, it shall be alleged in custody of what Sheriff, Bailiff, or Steward of any franchise, or other person having the return and execution of Writs, such Prisoner shall be, by virtue of the Process of the said court, at the suit of the Plaintiff;

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which

298 RULES AND ORDERS OF THE

which allegation shall be good, as if such Prisoner were in the custody of the Marshal.

Before the making of this Statute, the Plaintiff in every Action, in order to declare against the Defendant a Prisoner, was obliged to bring him into court by Writ of *Habeas Corpus*; which, being attended with great expence and much inconvenience, gave rise to the act; upon which it is to be observed, that the Declaration must be delivered personally to the Prisoner or Gaoler, of which the Rule requires an Affidavit, containing the time when and person to whom it was delivered; but should the same Plaintiff have several Causes of Action, or should other Plaintiffs institute Suits against such Prisoner, whether it be by detainer of the person, or for a cause not requiring Special Bail, the Proceedings in such Suits must be commenced by the like Process as if the Defendant were at large, and not by delivering a Declaration in the first instance, as is the proper way of proceeding against a Prisoner in custody of the Marshal, who, being always in court, requires no Process to bring him thither; *Robertson v. Douglas*, 1 T. Rep. B. R. 191.

As the delivery of a Declaration against a Prisoner to the Gaoler is good, so is the delivery and service of every other Proceeding and Notice in the Cause; *Whitehead v. Barber*, 1 Str. 248.

If a Defendant be in custody of the Marshal, the Plaintiff must demand a Plea before he sign Judgment; but if in custody of a Sheriff, no demand is necessary. A demand of a Plea is necessary in all cases where a Defendant may have appeared; and, Prisoners in the King's Bench Prison being always in court, it becomes necessary to demand a Plea before Judgment can be signed: But it is otherwise of Prisoners in any other custody;

today ; for the Stat. of 4 & 5 W. & M. does not bring Defendants into court to empower Plaintiffs to declare, but permits them to declare without any Appearance. It is laid down as a general Rule, that where a Prisoner is once superseable, he is always so ; but this must be understood with this qualification, that he is only superseable so long as he remains *in the same custody, under the same Process*, for, the moment the nature of the custody is changed, that Rule ceases ; therefore, if a Prisoner be superseable for irregularity, as for want of a demand of a Plea, he cannot take advantage of that after being charged in execution, supposing he have an opportunity of applying on that ground before he be charged in execution. *Per Bull. Jus. Rose v. Christfield*, 1 T. Rep. B. R. 591. *London Assurance Company v. Perkins*, there cited.

It frequently happens before Declaration, that a Defendant having surrendered himself, or been committed upon a Writ of *Habeas Corpus* to the King's Bench Prison, is from thence removed to the Fleet, in which case the Plaintiff may either declare against him in the court of which he becomes a Prisoner by the last removal, or in the court wherein the Action was commenced ; but in the latter case it is necessary that he be again brought back by *Habeas Corpus*, before the Plaintiff can deliver his Declaration ; *Sherfon and another v. Hodges*, 5 T. Rep. B. R. 35.

If any person be resident within the walls of the Fleet, or King's Bench, although not a Prisoner, any Creditor may lodge a detainer against him during such his residence, for then he could not be arrested in the ordinary manner ; *Wilkinson v. Jacques*, 3 T. Rep. B. R. 392.

In

300 RULES AND ORDERS OF THE

In proceeding against Prisoners, the Plaintiff must be cautious not to omit completing whatever in strictness of practice be necessary; for example, to file the Bail at the time he declares, and, when he charges the Defendant in execution, to have the Judgment and *Committitur* fully entered, the Roll carried in, and the Marshal's certificate of the Defendant being at that time in his custody; for should the Plaintiff omit doing any of these requisites, the Defendant will thereupon immediately become supersedeable; and should an irregularity happen in the progress of the cause, which may require the Plaintiff to abandon his proceeding, and take like steps with amendments *de novo*, previous to such new proceeding, he must give the Defendant notice of his abandonment; *Topping v. Ryan*, 1 T. Rep. B. R. 227. *Fisher v. Stanhope*, *ibid.* 464. *Fotterel v. Philby*, 3 Burr. 1841. *Unwin v. Kirchoffe*, 2 Str. 1215.

If a Defendant, a Prisoner, be superseded for any other cause, except the not charging him in execution, the Plaintiff may proceed in his Action to Judgment, and take his person in execution; but, if superseded for want of being charged in execution, the Plaintiff can neither sue out execution against the person, nor arrest him upon the Judgment; *Hall v. Howes*, Cases Temp. Ld. Hardwicke, 244.

By Stat. 8 & 9 W. III. c. 27. sec. 1. If the Marshal of the King's Bench, or Warden of the Fleet, suffer any Prisoner in their custody to go at large out of the Rules, except by *Habeas Corpus* or Rule of Court, it shall be adjudged an Escape.

And by sec. 2. every person obtaining Judgment in any Action of Escape against the Marshal or Warden, shall

shall have not only the remedies already by law allowed, but the Judges of the court where such Judgment shall be obtained, upon Oath made by the person obtaining such Judgment, that the same was obtained without fraud or covin, and that the Debt of the Prisoner making such escape was a true and real debt, and unsatisfied, shall, upon motion, sequester the profits of the office of Marshal and Warden, or so much thereof as they shall think fit, and apply the same towards satisfaction of the Debt due from the Prisoner who escaped, and all costs and damages recovered.

The Court resolved, that, to put this act in execution, a Commission of Sequestration ought to be granted to Commissioners appointed by the Court under the Seal; *Duncombe v. Churchwarden of the Fleet*, 1 Raym. 233.

MICHAELMAS TERM, 29 Geo. III.

The King against Bunts, and others.

[The Practice as to reading Affidavits, and hearing the Arguments of Counsel for and against Prisoners brought up for Judgment.]

LORD KENYON, Ch. Jus: said, The Court, after consideration, had resolved to adopt the following Rule: When any Defendant shall be brought up for Sentence upon

- upon any Indictment or Information *after Verdict*, the Affidavits produced on the part of the Defendant, if any such are produced, shall be first read; and then any Affidavits on the part of the Prosecution shall be read; after which the Counsel for the Defendant shall be heard, and lastly, the Counsel for the Prosecution.

And when any Defendant shall be brought up for Sentence, after Judgment *by default*, the Prosecutor's Affidavits shall be first read, then the Defendant's Affidavits; after which the Counsel for the Prosecution shall be heard, and lastly, the Counsel for the Defendant.

If no Affidavits shall be produced, the Counsel for the Defendant shall be first heard, and then the Counsel for the Prosecution; 2 T. Rep. B. R. 683.

HILARY TERM, 30 Geo. III.

[Respecting the Places of Abode of Attornies.]

“ WHEREAS the habitations of many
“ Attornies practising in this court,
“ resident in or near the cities of *London*
“ and *Westminster*, are often very difficult to
“ be found, whereby it is impracticable duly
“ to serve them with Notices, Orders, and
“ Rules, to the great delay of the Proceed-
“ ings in this court; for remedy whereof for
“ the future,” IT IS ORDERED, That the
Master shall forthwith cause to be prepared,
a proper Alphabetical Book for the purposes
after-mentioned; and that the same shall
be publicly kept at the Master’s Office in the
King’s Bench Walks, to be there inspected
by any Attorney or his Clerk; and that
every Attorney practising in this court, and
residing within *London* or *Westminster*, or
within ten miles of the same, shall, before
the first day of next Term, enter in
such book, in alphabetical order, his name
and place of abode, or some other proper
place within the cities of *London* or *West-*
minster, where he may be served with such
Notices,

304 RULES AND ORDERS OF THE

Notices, Summonses, Orders, and Rules ; and every Attorney afterwards to be admitted, and practising and residing as aforesaid, shall, upon his admission, make the like entry ; and as often as any Attorney shall change his place of abode, or the place where he may be so served with Notices, Summonses, Orders, and Rules, he shall make the like entry thereof in the said Book ; and that all Notices, Summonses Orders, and Rules which do not require a personal service, shall be deemed sufficiently served on such Attorney, if a copy thereof shall be left at the place lastly entered in such Book, with any person resident at or belonging to such place ; and if any such Attorney shall neglect to make such entry, that then the fixing up of any Notice, or the copy of any Summons, Order, or Rule for such Attorney, in the Master's Office, shall be deemed a sufficient service, unless the matter be such as shall require personal service.

By the Court.

EASTER TERM, 30 Geo. III.

RULE I.

[As to short Notice of Trial in Country Causes.]

IT IS ORDERED, That, from and after the last day of this Term, when short notice of Trial is to be accepted in Country Causes, such Notice shall be given at the least four days before the Commission-day, one day exclusive, the other inclusive.

By the Court.

Same Term.

RULE II.

[For limiting the Boundaries of the Rules of the King's Bench Prison.]

IT IS ORDERED by the Court, That, from and after the first day of Trinity Term next, the Rule made on Friday next after
X the

the octave of the Purification of the Blessed Virgin *Mary*, in the sixth year of the reign of King *George the First*, and all other Rules for establishing the Rules of the King's Bench Prison, shall be, and the same are hereby repealed. AND IT IS FURTHER ORDERED, That, from and after the said first day of Trinity Term next, the Rules of the King's Bench Prison shall be comprised within the bounds following (exclusive of the Public Houses herein-after mentioned): that is to say, from *Great Cumber-court* in the parish of *St. George the Martyr* in the county of *Surry*, along the north side of *Dirty-lane* and *Melancholy Walk*, the *Black-friars Road*, and along the western side of the said Road to the *Obelisk*, and from thence along the south-west side of the *London Road*, round the Direction-post in the centre of the Roads near the Public House known by the sign of the *Elephant and Castle*, and from thence along the eastern side of *Newington Causeway* to *Great Cumber-court* aforesaid. AND IT IS ALSO ORDERED, That the New Gaol, *Southwark*, and the Highway (exclusive of the houses on each side of it) leading from the King's Bench Prison to the said New Gaol, shall

shall be within and part of the said Rules.
AND IT IS LASTLY ORDERED, That all
Taverns, Victualling-houses, Ale-houses,
Wine-vaults, and Houses or Places licensed
to sell gin or other spirituous liquors,
shall be excluded out of and deemed no
part of the said Rules*.

By the Court.

Same Term.

RULE III.

[For limiting the Number of Day Rules to be
granted Prisoners each Term, and the Hour
such Rules shall expire.]

IT IS ORDERED, That, from and after
the first day of Trinity Term next, no
Prisoner in the King's Bench Prison, or

* The King's Bench Prison, being the Prison of the
Court, is wholly subject to their control as to its
Boundaries, and the conduct of the Prisoners and Of-
ficers belonging thereto; and various Rules have been
made for the government thereof, and limiting the
charges to be paid the Marshal and his Servants. Vide
Rule, Michaelmas, 3 G. II. ; December 17, 4 G. II. ;
and for enlarging and abridging the Rules, Hil. 6 G. I.,
Hil. 12 G. I.

398 RULES AND ORDERS OF THE

within the Rules thereof, shall have, or be entitled to have, Day Rules above three days in each Term. AND IT IS FURTHER ORDERED, That every such Prisoner, having a Day Rule, shall return within the Walls or Rules of the said Prison, at or before Nine o'clock in the evening of the day for which such Rule shall be granted.

By the Court,

Same Term.

RULE IV.

[Clerk of the Bails to mark Bail-pieces numerically.]

IT IS ORDERED, That, from and after the Effoin-day of next Trinity Term, the Clerk of the Bails of this court shall mark the Bail-pieces numerically as they are received.

By the Court.

TRINITY TERM, 30 Geo. III.

[*Custos Brevium* to indorse the Day and Hour whereon Writs shall be returned.]

IT IS ORDERED, That, from and after the last day of this Term, the *Custos Brevium* of this court shall indorse upon every Writ, on what Day and at what Hour the same was filed *.

By the Court.

• Vide RULES, East. 6 Jac. I., and Mich. 32 G. III.

MICH. TERM, 31 Geo. III.

[Clerk of the Rules to keep a Book, containing Entries of all Rules delivered out in Ejectment, how such Entries shall be made, and when the Rules shall be drawn up.]

IT IS ORDERED, That the Clerk of the Rules of this court shall for the future keep a Book, in which shall be entered all the Rules which, from time to time, shall

be delivered out in Ejectment, instead of the present Book, containing a list of the Ejectments moved; in which Book shall be mentioned the number of the Entry, the county in which the premises lie, the name of the nominal Plaintiff, the first Lessor of the Plaintiff, with the words "and others," if there be more than one; and also, the name of the casual Ejector. AND IT IS FURTHER ORDERED, That unless the Rule for Judgment shall be drawn up, and taken away from the Office of the Clerk of the Rules, within two days after the end of the Term in which the Ejectment shall be moved, no Rule shall be drawn up or entered in the Book, nor shall any proceedings be had in such Ejectment*.

By the Court.

* Vide RULE, Trin. 18 Car. II, 1666.

By Stat. 11 G. II. c. 19, § 13., Landlords may be made Defendants in Ejectment, either alone or by joining with their tenants; upon which act several cases have been before the Court, respecting what title, or claim of title, shall be sufficient to give the persons applying to be admitted Defendants the denomination of Landlord, within the meaning of the act; and Lord Kenyon, in *Lovelock, ex dem. Norris v. Doncaster*, 4 T. Rep. B. R. 122., says, "If the person
" requiring

“ requiring to be made Defendant under the act had
 “ stood in the situation of immediate heir to the person
 “ last seized, or had been in relation of remainder-man
 “ under the same title as the original landlord, he
 “ might have been permitted to defend as landlord by
 “ virtue of the act.” So an heir, who had never been
 in possession, was permitted to come in and defend an
 Ejectment as landlord; the father, under whom he
 claimed, dying just before, having first obtained a simi-
 lar Rule; Doe, *ex dem.* Heblethwaite & al. v. Rose,
 cited in the above case; so also a devisee in trust;
 Lovelock, *ex dem.* Norris v. Doncaster.

When the landlord alone be made Defendant, the
 act directs that Judgment be entered against the casual
 Ejector, with stay of execution, until the Court make
 further order therein. If under these circumstances a
 landlord be made Defendant, and after verdict for the
 Plaintiff he bring a Writ of Error, the Court will not
 permit such Plaintiff to sue forth execution, until the
 proceedings in error be determined; Jones *against* Ed-
 wards, 2 Str. 1241.

In Ejectment, as in all Actions, real and mixed,
 the Parties, Plaintiff and Defendant, must apply by
 motion in court for the several Rules, calling upon the
 adverse Party to plead, reply, &c.; but it is otherwise
 in personal Actions, wherein those Rules are given
 without a Special Application to the Court; and so also
 in Actions real and mixed, if the Defendant plead in
 abatement, and the Plaintiff demur, he may give the
 Common Rule to join in Demurrer, for Judgment
 thereupon would not be final; Cooke v. Cooke, 1 Salk.
 399.

EASTER TERM, 31 Geo. III.

The King against Dickin.

[Time of Limitation for applying for Informations in the nature of a *Quo Warranto*.]

THIS Case gave rise to the following General Rule, which Lord *Kenyon* read in court, *viz.* That the Court had resolved in future to limit their own discretion in applications of this nature (*viz.* for granting Rules for Informations in nature of a *Quo Warranto*) to six years; beyond which time they would not, under any circumstances, suffer a party who had been so long in possession of his franchise to be disturbed: and he afterwards observed, that there was great weight in the observation of Sir *Fletcher Norton*, in one of the *Winchelsea* Cases, that the limitation of twenty years, laid down by the Court, was much too long, and contrary to the intent of the Stat. 9 Annæ, c. 20.

Same Term.

[Respecting Affidavits sworn by illiterate Persons
before Commissioners.]

IT IS ORDERED, That, from and after the last day of Trinity Term next, where any Affidavit is taken by any Commissioner of this court, made by any Person who, from his or her signature, appears to be illiterate, the Commissioner taking such Affidavit shall certify, or state in the Jurat, that the Affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same; and also, that the said party wrote his or her signature in the presence of the Commissioner taking the said Affidavit.

By the Court.

TRINITY TERM, 31 Geo. III.

RULE I.

[Sheriffs may be called upon by Rule, to bring the Defendant's body into Court, though out of Office.]

IT IS ORDERED, That, from and after the last day of this Term, where any Sheriff, before his going out of Office, shall arrest any Defendant, and a *Cepi Corpus* shall afterwards be returned, he shall and may, within the time allowed by law, be called upon to bring in the body, by a Rule for that purpose, notwithstanding he may be out of Office before such Rule shall be granted*.

By the Court.

* Vide Stat. 20 G. II. c. 37. § 2., and Rule, Michaelmas, 32 G. III., with the notes thereto.

Same Term.

R U L E II.

[Respecting Applications for Admission of Attornies.]

IT IS ORDERED, That, from and after the last day of Michaelmas Term next ensuing, no Attorney who shall be retained or employed as a Writer or Clerk to any other Attorney, shall, during the time of such employ, take or have any Clerk under Articles; and that no service to any such Attorney under Articles, during the time that such Attorney shall be so employed by any other Attorney, shall be deemed good service. AND IT IS FURTHER ORDERED, That, from and after the same last day of Michaelmas Term, no person who shall enter into Articles with any Attorney or Attornies shall be at liberty to serve the Agent or Agents of such Attorney or Attornies, under such Articles, for a longer time than one year of his Clerkship; and that any such service to an Agent beyond that time shall not be deemed good service. "And, to the intent that better information
may

316 RULES AND ORDERS OF THE

“ may be obtained, touching the fitness and
 “ qualifications of persons applying to be ad-
 “ mitted Attornies,” IT IS FURTHER OR-
 DERED, That, from and after the same last
 day of Michaelmas Term, every person who
 shall intend to apply for Admission as an At-
 torney in this court, and who shall not
 have been admitted an Attorney or Solicitor
 of any other court, shall, for the space of
 one full Term previous to the Term in
 which such person shall apply to be ad-
 mitted, cause his name and place of abode,
 and also the name or names, and place or
 places of abode, of the Attorney or Attor-
 nies to whom he shall have been articled,
 written in legible characters, to be affixed
 on the outside of the Court of King’s
 Bench, in such place as public Notices are
 usually affixed, and also in some conspicuous
 place in the Chambers of each of the
 Judges of this court, and in the King’s
 Bench Office; and that no person, who
 shall not have regularly complied with this
 Order, shall in future be admitted an At-
 torney of this court *.

By the Court.

• Vide RULE Trin. 33 G. III.

MICH. TERM, 32 G. III.

[Sheriffs to return Writs, if called upon by Rule of court within the Time directed by the Rule.]

IT IS ORDERED That in future all Writs shall be returned by the Sheriff on the day on which the Rule for returning the same shall expire; and, in default thereof, the Plaintiff shall be at liberty to move for an Attachment on the next day*.

By the Court.

* Vide RULES, Easter, 6 Jac. I., Trin. 30 G. III., and Trin. 31 G. III.

This Rule arose out of a case of the King against the Sheriff of Surry, 4 T. Rep. B. R. 496., where the Sheriff had not returned the Writ until the morning of the seventh day, but before the sitting of the Court; to remedy which practice, the above Rule was made.

By Stat. 20 Geo. II. c. 37. § 2. It is enacted,
 “ That no Sheriff shall be liable to be called upon
 “ to make a return of any Writ or Process, unless he
 “ be *required* so to do within *six months* after the
 “ expiration of his Office.” Upon the construction
 of this act, the following points have been determined, *viz.* 1st, That the day on which the Sheriff
 leave

318 RULES AND ORDERS OF THE

leave his Office is to be computed as part of the six months; 2dly, That the time shall be reckoned by Lunar months, consisting of twenty-eight days, each, which is the manner of reckoning a month in Law, unless it be otherwise expressed; *The King v. Adderley*, 2 Doug. 462.; and it is not sufficient that the party personally require the Sheriff to return the Writ, he must have been served with a Rule of court for that purpose, within the six months, otherwise an Attachment cannot issue against him, the only way to require him to return a Writ being by Rule of court. *Rex v. Jones*, 2 T. Rep. B. R. 1.

In the case of the *King v. Coles*, 2 Doug. 419., it is said, that service of a Rule to return a Writ upon the Agent of an Under-Sheriff in town is insufficient, except it be upon the Agents of the Under-Sheriffs of *London, Middlesex, and Surry*, the Agents of whose Under-Sheriffs are considered as holding the Office of their respective Under-Sheriffs, and that service at those Offices is service upon the Under-Sheriff, but not elsewhere out of the Office. This case is however doubted; for by Stat. 23 H. VI. c. 10. sec. 1., Sheriffs are directed to make yearly a Deputy in the Courts of Chancery, King's Bench, Common Pleas, and Exchequer of Record, before they return any Writs, to receive all Writs and Warrants; and a penalty is imposed upon omitting so to do: And by Rule 1654, sec. 1. every Sheriff is directed to have his Deputy in court, to receive and return Writs; and that each Deputy yearly, before Hilary Term, have his name and place of residence, in *London or Westminster*, set and continued up in Tables in the Office of the Prothonotary so that there does not appear any reason to distinguish the Offices of the Under-Sheriffs' Agents
of

of London, Middlesex, and Surry, from those of other counties; and in truth, the business of Under-Sheriffs, as to making out Warrants and returning Writs, is principally done by their Agents in London: And in a case of *The King against the Sheriff of Essex*, Mich. 34 G. III. B. R., the Court refused to set aside an Attachment for not returning a Writ in pursuance of a Rule, upon the ground of it having been served upon the Under-Sheriff's Agent; but the Affidavit, whereupon the Attachment was obtained, not stating that, at the time of the service, the Original Rule was produced and shewn to the Under-Sheriff's Deputy, they set the Attachment aside upon payment of costs.

Writs made by an Order made in the
the Term in the fourth year of

the reign of his late Majesty King George
the second, by all the Judges of England,

HILARY TERM, 32 Geo. III.

IT WAS ORDERED, among other
things, that no Writ and Record of the

[Appointments made by the Master shall be duly
attended.]

any county in England, unless they should

IT IS ORDERED by the Court, That, from

and after the first day of next Easter

Term, on every Appointment to be made

by the Master, the party on whom the same

shall be served, and required to attend,

shall attend such Appointment without
waiting for a second, or, in default thereof,

10 the

the Master shall proceed *ex parte* on the first Appointment.

By the Court.

HILARY TERM, 33 Geo. III.

[Entering Causes for Trial at the Assizes for
Norfolk and the City of Norwich.]

“ **W**HEREAS by an Order made in Hilary Term, in the fourteenth year of
“ the reign of his late Majesty King *George*
“ the Second, by all the Judges of *England*,
“ for preventing inconveniences to Suit-
“ ors,” IT WAS ORDERED, amongst other
things, That no Writ and Record of *Nisi Prius* should be received at any Assizes in any county in *England*, unless they should be delivered to, and entered with, the Marshal, before the first sitting of the Court after the Commission-day, except in the counties of *York* and *Norfolk*; and there the Writs and Records should be delivered to, and entered with, the Marshal, before the first sitting of the Court on the second day
after

after the Commission-day. " And where-
 " as many inconveniences do happen to
 " the Suitors, and to the Sheriff and Jury-
 " men, and to the public business of the
 " Affizes in the county of *Norfolk*, from the
 " delay in entering the Writs and Records
 " for Trial of the Causes : now, to prevent
 " such inconveniences for the future,"

IT IS ORDERED by all the Judges of *Eng-
 land*, That no Writ or Record of *Nisi Prius*
 shall be received at the Affizes in and for
 the county of *Norfolk*, or City of *Norwich*,
 unless such Writ and Record shall be de-
 livered to, and entered with, the Marshal,
 before the first sitting of the Court on the
 day next after the Commission-day.

KENYON.

R. PERRYN.

LOUGHBOROUGH.

F. BULLER.

J. EYRE.

J. HEATH.

H. GOULD.

J. WILSON.

W. H. ASHHURST.

N. GROSE.

B. HOTHAM.

A. THOMPSON.

327 RULES AND ORDERS OF THE

TRINITY TERM, 33 G. III.

[Bail above may render a Defendant without justifying, although the Sheriff be called upon by Rule to bring in the Body.]

“ **W**HEREAS, by the present practice of
“ this Court, the Bail put in for the
“ Defendant in any Action cannot ren-
“ der such Defendant after a Rule has been
“ granted against the Sheriff to bring in
“ the Body before such Bail have justified
“ themselves in open court:” IT IS ORDER-
ED, That, from and after the last day of
this Term, Bail shall and may be at liberty
to render the Defendant, notwithstanding
such Rule, at any time before the expiration
thereof, the Attorney for the Defendant giv-
ing Notice of such Render to the Plaintiff’s
Attorney, without delay, and making Affi-
davit thereof.

By the Court,
ABBOTT.

Same Term.

[Persons 'applying to be admitted Attornies,
to enter their names in a Book at each of the
Judges' Chambers.]

“ **W**HEREAS, by a Rule made by this
“ Court, in Trinity Term, in the
“ thirty-first year of his present Majesty,”
IT WAS ORDERED, (amongst other things,)
That every person who should, after the
then next Michaelmas Term, intend to ap-
ply for admission as an Attorney in this
court, should, for the space of one full
Term previous to the Term in which such
person should apply to be admitted, cause his
name and place of abode, and also the
name or names, and place or places
of abode of the Attorney or Attornies to
whom he should have been articulated, written
in legible characters, to be affixed on the
outside of the Court of King's Bench, and
also in some conspicuous place in the
Chambers of each of the Judges of this Court,
and in the King's Bench Office; and that
no person who should not have complied
with this Order should in future be ad-
mitted

274 RULES AND ORDERS OF THE

mitted an Attorney of this court. AND
 " WHEREAS inconveniences have arisen by
 " the above practice, to remedy the same,"
 IT IS HEREBY ORDERED, That every
 person who shall, after the expiration of
 this Term, intend to apply as above stated,
 shall comply with the above in part recited
 Rule, (except as to fixing up his name and
 place of abode in the Judges' Chambers;) and shall, instead thereof, for the space of
 one full Term previous to the Term in
 which such person shall apply to be admitted, enter, or cause to be entered, in a Book
 to be kept for that purpose at each of the
 Judges' Chambers of this court, his name
 and place of abode, and also the name and
 place of abode of the Attorney or Attor-
 nies to whom he shall have been articulated;
 and that no person who shall not have com-
 plied with this Rule shall in future be ad-
 mitted an Attorney.

By the Court,

ABBOTT

HILARY TERM, 34 Geo. III.

IT IS ORDERED, That the name of all the cases in which this Court did, in the now last, or in this ~~present~~ Term, order Writs of Attachment to issue, in order to compel any person to answer upon Interrogatories, and on which Judgment shall not have been given in the course of this Term, shall be inserted in the list of Motions appointed to come on peremptorily in the next Term, in order that the Court may be informed what shall have been done in prosecution of such Writs.

AND IT IS FURTHER ORDERED, That in future, whenever any such Writ of Attachment shall be ordered, the name of the Cause shall be inserted in the list of Motions appointed to come on peremptorily in the ensuing Term.

COURT OF KING BENCH.

Michaelmas Term, 1784. Geo. III. R.

It is ordered, That the name of all the
parties to which this Court do, in the new
half, or in the present Term, order Writ of
Assessment to issue, in order to compel
parties to answer upon interrogatories, and
on which judgment shall not have been
given in the course of this Term, shall
be entered in the list of matters appointed
to come on for judgment in the next Term,
in order that the Court may be enabled
when first there shall have been production of
such Writs, to put the parties to answer
And it is further ordered, That
in future, whenever any Writ of Ass
essment shall be ordered to issue, the
same shall be entered in the list of mat
ters appointed to come on for judgment in
the ensuing Term.

APPENDIX.

THE Rules from Trinity Term 2 Jac. I. 1604, to Easter Term 1651 (*tempore Reipublicæ*), and from Trinity Term 13 Car. II. 1661, to Michaelmas Term 3 Geo. II. 1729, with a few Exceptions, having been originally published in the *Latin* Tongue, the Editor has thought it proper, in order that the same may at any time be referred to, to add the *Latin* Text to the Work as an APPENDIX.

*Die Mercurii prox' post Tres Septimanas Sanctæ
Trin. Anno 2 Jac. primi Regis.*

I. **O**RDNATUM est per Curiam in plena Curia quod null' Attornat' five Clericus attendens hic in Curia deliberabit alicui Attornato vel Clerico attendenti hic in Curia vel alicui aliæ Personæ vel accipiet ab aliquo Attornato vel Clerico attendente in Curia hic vel ab aliqua alia persona aliquod placitum imponendum in Officio Clerici Papyri vel copiam ejusdem placiti priusquam placitum illud sit impositum in eodem Officio

Clerici Papyri & quod talis Copia postquam Placitum illud sit impositum facta fuerit per Clericum in prædicto Officio Clerici Papyri attendentem & signata cum manu uni' Clerici ibidem attendentis sub pœna quod quilibet Attorn' vel Clericus in Curia hic attendens forisfaciet pro prima Offensa sua sic commissâ 10s. solvendo Pixidi ad usum Pauperum ; pro secunda Offensa sua sic commissâ 20s. similiter solvendo Pixidi ad usum Pauperum ; & pro tertia Offensa sua sic commissâ quod talis Attornatus vel Clericus expelletur a Curia.

Eodem Die.

II. ORDINATUM est per Cur' in plena Curia quod quilibet Attornatus & Cler' attendens hic in Curia qui recipiet aliquod Postea ab aliquo Clerico Assisarum vel aliquo alio Officiario pro Retorna Postea assignato notabit quodlibet hujusmodi Postea sic retornatum cum Manu Clerici pro eisdem Postea recipiendis hic in Curia assignati infra duos Dies postquam talis Postea venit ad Man' hujusmodi Attornati sive Clerici hic in Curia attendentis sub pœna quod quilibet Attornat' vel Clericus in Curia hic attendens forisfaciet pro prima Defalta sua in hac parte 10s. solvendo Pixidi ad usum Pauperum ; pro secunda Defalta sua in hac parte 20s. similiter solvendo Pixidi ad usum Pauperum ; & pro tertia Defalta sua quod talis Attornatus vel Clericus expelletur a Curia.

*Die Martis proximo post Octabas Pur' beate
Mariæ Anno 3 Jac. primi Regis.*

ORDINATUM est quod si aliqua Causa mota fuerit prius in Curia in Præsentia Consilii ambarum Partium & Curia tunc superinde ordinaverit inter easdem Partes si eadem

si eadem Causa iterum moveatur contra eandem Regulam sic per Curiam datam tunc fiat Attachiammentum versus eum qui procuraret eandem Motionem fieri contra Regulam Curiae sic prius factam, Et quod Consil' qui sic movet habens Notitiam de eadem priori Regula non audiatur hic in Curia in aliqua Causa eodem Termino quo Causa illa sic mota fuerit contra Regulam Curiae in forma praedicta.

Die Lunae proximo post Crastin' Ascensionis Domini Anno 5 Jacobi primi Regis.

ORDINATUM est per Curiam in plena Curia quod quaelibet Pars ad cujus Requisitionem aliquae denariorum summae inferentur in Curiam hic custodiendae solveret Secundario Capitalis Clerici Domini Regis hic pro tempore existenti pro Custodia huiusmodi Denariorum summae pro quibuslibet Centum Libris 20 s. Et sic secundum Ratam illam solveretur pro qualibet maiore aut minore summa pro Custodia inde tam pro Denariorum summa in forma praedicta inferenda quam secundum Ratam praedictam pro Denariorum summa modo in Curia hic remanente Et pro Denariorum summa subter summam 10 l. solveretur pro huiusmodi Denariorum summa 2s. prout solvi diu usitat' fuit.

Die Mercurii proximo post quinque Paschae Anno 6 Jacobi primi Regis.

ORDINATUM est per Curiam quod quilibet Vic' ante finem cuiuslibet Terminii aut immediate post finem cuiuslibet Terminii deliberabunt & retornabunt in Curiam omnia brevia de Latitat & brevia superinde extra hanc Curiam emanantia eis & eorum cuilibet directa & de-

& deliberata & super Retornam & Deliberationem eorundem brevium aut eorum alicujus quilibet Vicecomes sic retornans breviam prædictam præstabit Sacramentum in Curia hic quod breviam prædictam per ipsum sic tunc deliberata & retornata fuerunt omnia breviam ei directam & deliberata & quæ ad Manus devenerunt Et si aliquis Vicecomes fecerit Defaltam in hac parte tunc quilibet Vicecomes sic Defaltam faciens attend' Curiam hic ad expectandum Judicium Curie hic pro Contemptu suo in hac parte facto.

*Die Veneris proximo post Menssem Sancti Michaelis
Anno 7 Jacobi primi Regis.*

ORDINATUM est per Curiam quod nullus Attornat' imponet aliquod Ballium pro aliquo Defendente quocunque in aliqua Causa quacunque antequam hujusmodi Attornat' pro tali Defendente det prius Notitiam Attornato pro Querente in Causa qua idem Defendens tradetur in Ballium sub pœna expulsionis ab Officio.

Die Veneris proximo post Crastin' Sanctæ Trinitatis Anno 9 Jac. primi Regis.

ORDINATUM est quod nullum Breve de Audita Querela pro aliqua Causa quacunque allocatur nec Ballium superinde capiatur nisi hic in publica & aperta Curia & per Specialem motionem hic prius factam & Regula superinde intratur.

Die Lune proximo post Crastin' Ascensionis Domini Anno 13 Jac. primi Regis.

QUIA datum est Curie Domini Regis coram ipso Rege intelligi per Motionem in plena Curia ex gravi Querela

Querela Attornator hujus Curie quod cum iidem Attornati sunt Attornati de Recordo in Curia hic in Recordo nominati & sic fuerunt ab antiquo & attendentes coram Justiciariis ad Assisas capiendas in diversis Circuitibus ad imponendum Recorda & ad comparandum pro Clientibus ad Assisas in talibus Recordis in quibus ipsi nominantur Attornati coram eisdem Justiciariis ad Assisas & sunt Attornati de Recordo in eisdem Recordis de Nisi Prius & parati ad informandum Consilium Clientium & Magistrorum suorum in ea parte ibidem quod iidem Attornati hujus Curie Compulsi fuerunt per Mareschallos diversorum Justiciariorum ad Assisas solvere dictis Mareschallis pro imponendo Recorda de Nisi Prius pro Querentibus & comparando pro Defendentibus in talibus Recordis in quibus ipsi sunt & nominantur Attornati diversa indebita & majora & graviora feoda & pecuniarum summas quam Attornati Curie de Banco in talibus Casibus persolverunt & persolvere usi fuerunt & quod eisdem Attornatis hujus Curie non allocantur Feoda sua pro Attendentiis suis ad Assisas predictas in Derogationem Dignitatis hujus Curie ac ad grave Dampnum dictorum Attornatorum hujus Curie & eorum Clientium.

Et quia satis constat Curie Domini Regis hic quod fuerunt Attornati hujus Curie ab antiquo & Warranta Attornati quolibet Terminum recipiuntur pro eis ac quod equa ac quod Justitia eis in hac parte fieri possit Datum est intelligi per Curiam dicti Domini Regis hic quod posthac nullus Attornatus hujus Curie pro Impositione alicujus Recordi de Nisi Prius coram aliquo Justiciario ad Assisas in quo ipse nominabitur Attornatus in Recordo & attendens fuerit ad Assisas circa Triationem talis Recordi solvat seu solvere compulsus fuerit plus sive majorem summam Pecunie quam Attornati de Communi Banco apud Westmonasterium in talibus Casibus solverunt

verunt & solvere consueverunt sed quod Feoda Attorn' hujus Curiae eis allocentur ad Assisas praedictas.

Die Lune proximo post Crastin' Ascensionis Domini Anno 17 Jacobi primi Regis.

ORDINATUM est per Curiam hic in plena Cur' quod ubi aliquod Judic' in aliqua Causa quacunque hic in Cur' Domini Regis coram ipso Rege in posterum reddit' fuerit ubi Debitum & Dampna attinger' ad summam 20l. seu amplius quilibet Attorn' in tali Causa fecerit vel fieri procurabit quandam Notam in pergamenu' vel papyr' continen' Nomina & Cognomina Partium Quer' & Defend' & Debit' & Dampn' recuperand' una cum Termino & Rotulo ubi tale Judic' fuerit intrat' in hac qua sequitur Forma, viz.

A. B. ad Sectam C. D. Deb' 20l.

Pasch. 17 - - Rot. 302.

A. J. & B. R. ad Sect' N. S.

Dampn' 23l. 13s. 4d.

Hilary - 15 Rot. 100.

B. Attorn'.

Et hujusmodi Notam sic fact' deliberabit L. C. uni Cleric', &c. & cuilibet alij Clerico hujusmodi Locum suum in posterum exercend' per ipsum in quodam Libro eodem proposito providend' registrand'.

Die Martis proximo post Octab. Pur' beatae Mariae Anno 19 Jacobi primi Regis.

Cum Questio facta fuit si omnia Brevia judicial' super Judic' in Cur' Domini Regis coram ipso Rege reddita emanant' pro Executione eorundem currerent & exequi possent infra separal' Com' Walliae & superinde praed'

præd' Cur' Domini Regis coram ipso Rege per Rob'tum Heath Mil' Solicitator Domini Regis nunc mota existens quia dictæ Cur' dicti Domini Regis coram ipso Rege super matura Deliberatione & Consideratione diversorum Præceden' in hoc Casu antehac fact' manifestè liquet quod usualis & constans Consuetudo Cur' præd' hacten' fuit & est quod omnia hujusmodi Brevia infra Walliam possint & debent legitimè exequi. Ordinatur est quod omnia hujusmodi Brevia judicial' fieri & dirigi possint & debent Vic' præd' separal' Com' Walliæ & per eosdem Vic' pro Tempore existen' exequi debent sicut in omnibus al' Com' Angliæ Periculis suis incumben'.

*Die Martis proximo post Octab' Pur' Anno 8 Car.
primi Regis.*

ORDINATUM est quod null' Philizar' Cleric' vel Attorn' Cur' super Comparenc' alicuj' Defend' in aliquo Brevi original' prosequetur faciet intrabit vel deliberabit aliquam Narrationem varian' in Materia ab original' Brevi primo prosecut' nec recipiet aliquam talem Narrationem sic varian' super Comparenc' sua super tali Brevi original' sine speciali Regula in aperta Cur' prius obtenta nec prosequetur faciet intrabit sive deliberabit alicui alii Philizar' Clerico sive Attorn' Cur' comparen' super aliquo Brevi original' nec recipiet de aliquo Philizar' Clerico sive Attorn' plur' narr' quam unam sub Pœna Forisfacturæ Officii cujuslibet Philizar' sic offenden' & expulsionis a Cur' ac cujuslibet alius Clerici vel Attorn' Cur' sic offenden' expulsion' a Cur'.

Die

*Die Martis prox' post tres Septiman' Pascha
Anno 9 Caroli primi Regis, 1633.*

ORDINATUM est quod separal' Record' Judic' hic in Cur' affilat' super Brevib' de Errore quæ non intrantur de Recordo emendabuntur in stilo Cur' & fiant Cur' Palatii Regis Westm' tent' apud Southwerk in Com' Surr' infra Jurisdictionem istius Cur' die Veneris scilt' tali Die Anno Regni Domini nostri Caroli Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defensor', &c. octavo coram Thoma Edmonds Mil' Thesaurario Hospitii Domini Regis Edmundo Verney Mil' Mariscallo Hospitii præd' & Edwardo Herbert Ar' Sene'llo Cur' præd' Judicib' Cur' ill' Virtute Literarum Patentium dicti Domini Regis nunc geren' Dat' apud Canbury 12 Die Julii Anno Regni sui Sexto.

*Die Veneris in Crastino Ascensionis Domini Anno
11 Caroli primi Regis.*

ORDINATUM est quod nullum Breve de Certiorari super aliquo Breve de Errore prosecut' vel fact' erit per aliquem Clericum vel Attorn' Cur' post aliquod Breve de Certiorari in eadem Causa prius prosecut' & retornat' sine Motione per Consil' in Curia.

*Die Sabbati proximo post Octab' Pur' Anno
14 Caroli primi Regis.*

ORDINATUM est quod quilibet Prisonar' qui removeatur a Custod' Gardiani de le Fleet Prisonæ Mar' huj' Cur' virtute Brevis de Habeas Corp' remanebit in
Prisona

Prisona Mar' præd' & non deliberetur quousq' solvit
Feoda Prison' Gardian de le Fleet præd' debita.

*Die Jovis prox' post Crastin' Animar' Anno
15 Caroli primi Regis.*

ORDINATUM est per Cur' quod omnes & singuli
Philizar' huj' Cur' in propr' personis suis comparebunt
in secundo Retorn' prox' Termin' ad intenden' Offi-
cium suum & ad ostendend' Causam de eorum non
Attendenc' aliter Officium eorum sic delinquen' seisi-
retur.

*Die Lunæ proximo post tres Septiman' Sanctæ
Mich. Anno 17 Car. primi Regis.*

ORDINATUM est quod in omnibus Materiis in Lege
Special' Verediç' & Brevib' de Errore super Materiis
in Lege vel Special' Verediç' ac similiter in omnibus
al' Causis in Cur' dependen' in Libro Cleric' Papyr'
intrat' vel intrand' ubi Libri Justic' deliberari debent
quod secundum antiquum Cursum Cur' immediatè post
Lectiõnem Recordi Libri Capitali Justic' & Justic' sen'
per Quer' vel ejus Attorn' & al Justic' per Defend'
vel ejus Attorn' deliberari debent Et si una Pars
vel ejus Attorn' Libros in Forma præd' deliberare
neglexerit tunc altera Pars vel ejus Attorn' tales Libros
deliberari omisso ad Custagia Partis quæ ita neglex-
erit deliberari debet ante aliquod Argumentum in eadem
Causa ad Barram per Consil' fuit fact'.

*Die Lunæ proximo post tres Septiman' Sanctæ
Trin. Anno. 20 Car. primi Regis.*

ORDINATUM est per Cur' si Cleric' Error' per Ca-
pital' Justic' huj' Cur' appunctuat' non recipiet Breve
de

de Errore & faciet ea quæ adinde pertinent sicut consuevit tunc Cleric' Thesaurar' huj' Cur' faciet in ea parte quod Cleric' Thesaurar' ill' Temporibus præteritis sive præd' Cleric' Error' in ea parte facere consuevit secundum Legem & Consuetud' huj' Cur'.

Die Mercur' proximo post tres Septiman' Sanctæ Trin. Anno. 21 Car. primi Regis.

ORDINATUM est quod Vic' Com' Cestr' retorn' omnia Brevia a Cur' hic emanant' ei directa secundum Retorn' eorundem Brevium sub Poena 50 l.

Die Jovis proximo post Octab' Sancti Martini Anno 21 Caroli primi Regis.

ORDINATUM est quod Attorn' pro Quer' in qualibet Actione in hac Curia qua bon' Ballium de Jure requireretur tempore oblationis Ballii ill' attend' super Notie' ei dat' coram aliquo Justic' huj' Cur' ad Ballium ill' sic oblat' acceptand' vel aliter ad capiend' exceptionem sub Poena extraponend' e Rotulo.

Die Veneris proximo post Crastin' Pur' Anno 21 Caroli primi Regis.

ORDINATUM est quod omnes Attorn' huj' Cur' non personaliter comparentes hic in Cur' in tres Septiman' Paschæ prox' extraponentur e Rotulo quodq; omnes Vic' huj' Regni Angliæ vel eorum Deputat' attendent Cur' hic in Quinden' Paschæ prox' & sic de Die in Diem durante toto Termino & sic quolibet Termino ad faciend' Responsiones suas ad omnia Brevia sive Processus eis respectivè direct' & a Cur' hic emanant' sub Poena cujuslibet eor' 40 l.

Die

Die Lunæ proximo post quinque Septiman' Pasche

Anno 23 Caroli primi Regis.

ORDINATUM est quod subvic' cujuslibet Com' & Civit' attend' Cur' Domini Regis coram ipso Rege secundo Retorn' cujuslibet Termin' sub Pœna 40 l.

Die Lunæ proximo post Quinden' Sancti Hil.

Anno 23 Caroli primi Regis.

ORDINATUM est quod omnes Clerici Philizar' & Attorn' huj' Cur' qui impon' Speciale Ballium pro Defend' affilabunt omnia talia Special' Ballia sic capt' & accept' per Attorn' Quer' indilate post Acception' inde aliter præd' Cleric' Philizar' vel Attorn' pro Defalta affilationis Ballii præd' extraponantur e Rotulo.

Die Mercurii prox' post Octab' Sancti Hil. Anno

Domini 1649.

I. ORDINATUM est quod post ordinar' Regul' huj' Cur' in posterum dat' Defend' ad respond' in aliqua Actione Transgr' & ejectionis Firmæ & Defend' non respond' ad Narrationem Judic' dari & intrari poterit pro Quer' versus Defend' pro Defectu Responsi prout in aliis Actionibus absque Speciali Motione in Cur' per Consil' Proviso quod in hoc instanti Termin' Sancti Hillar' Quer' dabit Defend' Specialem Notic' hujus general' Regulæ.

Die Veneris prox' post Octabas Sancti Hil. eodem

Anno.

II. ORDINATUM est quod in quolibet Exitu juncto per Patriam triand' & Record' de Nisi Prius superinde

prosecut' pro Triatione exit' ill' si Clericus huj' Cur' qui Exit' ill' intrare debuit eundem Exit' de Recordo non intrabit ante Initium prox' Termin' post Record' de Nisi Prius ut præfertur prosecut' forisfaciat 20 s. solvend' Pixidi ad usum Pauperum.

Die Mercurii prox' post Oñab' Pur' Anno 1650.

III. ORDINATUM est quod specialia Ballia capta & allocata coram aliquo Justic' huj' Cur' inferentur in Officio Capitalis Clerici eodem Termino allocata forent affiland' de Termino quo capta fuerunt sub Pœna quod quilibet Clericus vel Attorn' qui Defaltam fecerit inde forisfacit 5 s. solvend' Pixidi Pauperum.

*Die Martis prox' post Tres Sept' S. Trin. Anno
13 Car. II. Regis.*

ORDINATUM est quod quilibet Attorn' hujus Cur' qui imponerit aliquod Ballium per Recogn' coram Capital' Justic' seu aliquo al' Justic' Cur' hic & quer' vel ejus Attorn' hujusm' Ballium acceperit qd' tunc Attorn' qui imponerit hujusm' ballium id' ballium affilari causabit infra viginti dies post talem acception' sub pœna 40 s. Et quod omnia ballia modo capt' de bene esse & quæ accept' sunt per Attorn' quer' & nunc remanent cum aliquo Justic' hujus Cur' similiter affilantur infra viginti dies nunc prox' sequen' sub consimili pœna 40 s.

*Die Jovis prox' post Mens' Sancti Mich' Anno
13 Car. II. Regis.*

CUM ex querel' Clericor' Capital' Cler' hujus Cur' & eorum Clericor' Cur' hic datur intelligi & informari Qd' cum secund' usum & consuetudinem Cur' hic de antiquo usitat' Custodes sigilli Dom' Regis pro Cur' hic allocaverunt & allocari consueverunt & debuerunt cuilibet Clerico Capital' Cleric' hujusm' Cur' & cuilibet Clerico hujusm' Cleric' ad finem cujuslibet Termini sigillation' unius brevis gratis sine aliquo inde solvend' nomine *Je vous Prie*, quodque hujusm' allocatio per hujusm' Custodes sigilli præd' nuper negat' & detent' fuit.

Ordinat' est quod Allocatio præd' Clericis præd' secund' antiquum usum Cur' hic de futuro allocetur per Custodes sigilli Dom' Regis pro Cur' hic nisi Custodes sigilli præd' ostenderent causam in contrar' die Lunæ prox' post Crastin' Animar'.

*Die Lunæ prox' post Mens' Pasch. Anno 14
Car. II. Regis.*

ORDINATUM est per Cur' quod quilibet Clericus & Attorn' hujus Cur' super notic' eis dat' ad attend' aliquam motionem in Cur' attend' hujusm' motionem in Cur' secund' notic' sub pœna forisfaciend' decem solid' solvend' per hujusm' Cleric' & Attorn'

*Die Martis' prox' post Oñab. Sanctæ Trin.
Anno 14 Car. II. Regis.*

I. ORDINATUM est per Cur' quod in qualibet Action' de placito transgr' & ejection' firmæ fore prolat'

si terræ jacent in Com' Midd' tunc billa de Midd' prosecut' fuerit & si terræ jacent extra Midd' tunc bre' de Lat' prosecut' fuerit versus casual' Ejector' in qualib' tali ejectione defend' nominat' Ac etiam quod commune ballium pro tali defend' affiletur antequam aliqua declaratio per billam in hujusm' Actione deliberat' fuerit alicui tenenti in possession' tenementor' in hujusm' Narr' specificat'. Et quod si Attorn' hujus Cur' pro quer' defecerit in performance inde, tunc nullum judicium intretet pro quer' versus casual' Ejectorem nec tenens in possession' cogn' dimission' intration' & ejection' tenementorum in tali Narr' mentionat', ad triand' Exit' inter partes prædicta'.

*Die Mercurii prox' post Tres Sept' Sanctæ Trin'
Anno 14 Car. II. Regis.*

I. ORDINATUM est per Cur' quod omnes Attorn' hujus Cur' comparebunt in Cur' in eorum propr' personis super vel ante decimum quartum diem Termini Sancti Michaelis & super vel ante septimum diem cujuslibet al' Termini sub poena forisfaciend' pro primo default' 10s. & pro secundo default' 20s. Et quod quilibet Attorn' intrat' fuerit in Officio hujus Cur' omnia placita & Morationes in Lege infra tres Dies post finem cujuslibet Termini. Et quod nullæ Regule fact' fuerint per aliquem Justic' Cur' Domini Regis coram ipso Rege in aliqua Actione in dict' Cur' penden' post tertium diem prox' post finem alicujus Termini. Et quod null' Attorn' dict' Cur' attend' aliquem Justic' præd' ad faciend' aliquas Regulas post tertium diem prox' post finem alicujus Termini. Et quod null' Regule fact' fuerint peremptoriè Attorn' post tertium Diem post finem alicujus Termini. Et quod

quod omnes Regulæ fact' post tertium diem post finem
alicujus Terminii vacuæ forent.

*Die Martis in Crastino Purificationis beatæ
Mariæ Anno 15 Car. II. Regis.*

I. ORDINATUM est quod quilibet Attornat' huj'
Curie personaliter attend' Magistrum Jebyll ad tem-
pora per ipsum præfixenda super Notic' inde eis dat'
ad examinand' Causas coram ipso in Referenc' existent'.
Et quod quilibet Attorn' qui defalt' inde fecerit pro
qualibet defalt' forisfaciet decem solid'.

*Die Jovis prox' post Octab' Pur' beatæ Mariæ
Anno 15 Car. II. Regis.*

II. ORDINATUM est per Cur' quod nullum bre'
de alias vel plur' Distring' Jur' cum Tales pro tria-
tione Exit' ad Barr' emanat fuerit priusquam precedens
breve de Distring' Jur' cum panello de nominibus
Jur' adinde annex' deliberetur Secundario hujus Cur'
ad intentionem quod' Exitus forisfacti per Jur' pro
eorum non comparentia super dicto præceden' brevi
debito mōdo extrahantur.

*Die Mercurii prox' post Tres Septimanas Sanctæ
Trin. Anno 15 Caroli II. Regis.*

I. ORDINATUM est per Cur' quod in qualibet
actione Transgr' & Ejectione firmæ ubi per Regulam
Cur' Defendens cogn' Dimissionem Intrationem &
Ejectionem pro tant' præmissor' in narratione men-
tionat' quant' sunt in possessione dicti Defenden' aut
Subtenentium suor', Attorn' ejusdem Defenden' pro-

tinus deliberabit Attorn' Queren' certam notam in scriptis de Tenementis sic in possessione dicti Defend' aut Subtenentium suor' existen'.

Eodem Die.

II. ORDINATUM est per Cur' quod nullum Recordum de Nisi prius pro Triatione Exit' ad Affisas figilletur post finem unius mensis prox' sequen' Clausum Terminij.

Die Martis in Crast' Animar' Anno 15 Car. II. Regis.

I. ORDINATUM est quod verus locus habitationis & vera additio cujuslibet personæ quæ præstiterit Sacrament' suum in Cur' hic inferantur in hujusmodi Sacramento.

Die Mercurii in Festo Sancti Martini Anno 15 Caroli II. Regis.

II. ORDINATUM est per Cur' pro evitatione oppressionis colore process. e Cur' hic emanant' qd' nullus Attorn' præsumat ad periculum suum facere vel fieri causare aliquod præceptum seu breve cum Clausula Acetiam, &c. versus aliquem hæred' Executorem sive Administrator' nec in aliquo casu ubi per consuetud' Cur' speciale Ball' peti non debet: Quodque si Defend' legitimè deliberetur ab Arresto super aliquo process. idem Defend' non iterum arrestabitur eodem tempore virtute alius processus ad sectam ejusdem querentis. Et si aliquis Attorn' aut Quer' offenderit in præmissis nomen cujuslibet Attorn' sic offenden' expungetur e Rotulo

Rotulo Attorn' & præterea tam idem Attorn' quam Quær' in dict' process. nominat' respectivè puniuntur prout Cur' justum videbitur,

Die Sabbati prox' post Octab' Sancti Martini
Anno 15 Car. II. Regis.

III. ORDINATUM est per Cur' qd' quilibet Clericus hujus Cur' quolibet Termino tempore redditionis computi sui solvat Officiario hujus Cur' qui recipit billas hic in Cur' de Recordo affiland' antiquum feod' duorum solidorum pro quolibet Attorn' & Philizar' hujus Cur' qui retinet dictum Clericum ad agend' & intrand' sectas & negotia in eadem Cur' hic penden.'

Die Sabbati prox' post Quinden' Sancti Martini
Anno 15 Car. II. Regis.

IV. ORDINATUM est per Cur' qd' in omnibus actionibus transgress. & aliis actionibus ubi causa Actionis allegat' fieri Vi et Armis seu contra pacem Domini Regis prosequend' in Cur' hic, vera additio Gradus qualitatis sive mysterii, acetiam, verus locus habitationis cujuslibet defend' inferantur in qualibet hujusmodi actione ad periculum Attorn' quær'.

Die Veneris prox' post Octab' Pur' beate Mariae
Anno 15 & 16 Car. II. Regis.

I. ORDINATUM est per Cur' qd' quilibet Clericus hujus Cur' reddat Comp'm suum Secundario ejusdem Cur' infra sex dies prox' post finem cujuslibet Terminii Paschæ & infra octo dies prox' post finem cujuslibet Terminii Sancti Michaelis, & infra decem dies prox' post finem cujuslibet Terminii Sanctæ Trinitatis & Sti.

Hillarii secund' antiquam consuetud' & separales priores Regulas hujus Cur'. Et qd' quilibet Clericus in posterum offendens in præmissa pro prima offens. suspendatur a privilegio practicationis suæ quodq; nulla brevia nomine suo signentur nec Rotuli de intrationibus suis in officium recipiantur quousq; Comp'm suum reddidit & denar' superinde debit' solverit. Et qd' pro secunda offens. in præmiss. expungatur e Rotulo Clericorum hujus Cur' ad discretionem Capitalis Clerici vel Secundar' hujus Cur'.

Eodem Die.

II. ORDINATUM est per Cur' qd' Exitus junct' de aliquo precedente Termino triat' fuerint infra primam Septimanam cujuslibet Termin: Et qd' Custos Breuium hujus Cur' non sigillabit aliquod Recordum de Nisi prius talium Exit' post Septimanam cujuslibet Termin' absque special' licenc' Capitalis Justiciarii hujus Curie:

Et ulterius Ordinat' est qd' Nisi Cause triand' apud London & Midd' intrat' fuer' cum Capital' Justic' hujus Cur' per spacium duorum dierum ante Sessionem super qua tal' Cause triand' sunt, Mareschallus potest intrare Ne recipiatur ad instantiam defendentis sive ejus Attorn'.

*Die Lune prox' post Crastin' Ascens. Domini
Anno 16 Caroli II. Regis.*

I. ORDINATUM est per Cur' qd' quilibet Attorn' hujus Cur' qui exonerabit aliquem Prisonar' onerat' cum aliqua Actione hic in Cur' penden' extra prisonam pro defectu prof. infra tres Terminos dabit notitiam Quer' in eadem Actione vel ejus Attorn' ad compa-

rend' coram aliquo Justic' hujus Cur' ad ostend' causam quare hujusmodi Prisonar' exonerari non debet pro defectu prosecutionis priusquam procurabit aliquod warrantum sub manu alicujus Justic' hujus Cur' pro exoneratione hujusmodi prisonar' extra prisonam. Et si Quer' in eadem Actione vel ejus Attorn' super hujusmodi notitiam eis vel eorum alteri inde dat' non comparebit ad ostend' causam in contrarium tunc super Sacramentum præstand' hujusmodi notitiæ, hujusmodi prisonar' versus quem nulla prosecutio fu'it infra tres Terminos tunc prox' præceden' exoneretur extra Prisonam ad periculum Attorn' qui procurabit hujusmodi prisonar' in forma præd' exonerari.

Eodem Die.

II. ORDINATUM est per Cur' qd' quilibet Attorn' hujus Cur' qui prosecut' fu'it aliquod breve de Errore super aliquo Judicio in Cur' Domini Regis coram ipso Rege obtento retornabil' in Cur' Camere Scaecarii allocabit hujusmodi breve de Errore cum Clerico Errorum hujus Cur' infra quatuor dies prox' post notitiam dat' Attorn' Quer' hujusmodi brevis de Error' sic per ipsum prosecut' acetiam Recogn' super hujusmodi breve de Errore cognitionem infra quatuor dies prox' post allocationem hujusmodi brevis de Errore (si Recogn' inde cognosci debet) vel in defectu inde executio fiat super hujusmodi Judicio, brevi de Errore in forma præd' prosecut' non obstan'.

*Die Mercur' prox' post Tres Sept' Stæ Trin. Anno
16 Car. II. Regis.*

ORDINATUM est per Cur' in plena Cur' qd' nullus Attorn' sive Clericus attenden' hic in Cur' præsumat deliberare alicui al' Attorn' vel Cleric' attenden' hic

in

in Cur' vel alicui al' person' vel accipere ab aliquo al' Attorn' vel Clerico attend' in Cur' hic vel aliqua al' person' aliquod placitum imponend' in Officium Cleric' Papir' vel copiam hujusmodi placiti priusquam hujusmodi placitum imposit' fuerit in eodem Officio Cleric' papir'. Et quod talis Copia postquam hujusmodi placitum imponetur fact' fu'it per Clericum in prædict' Officio Cleric' papir' attenden' & signat' sub manu unius Clericorum ibidem attenden' sub pœna qd' quilibet Attorn' sive Clericus in Cur' hic attend' forisfaciet pro prima offens. sua sic commissâ decem solid' solvend' Pixidi ad usum Pauperum : Et pro secunda offens. sua sic commissâ viginti solid' solvend' similiter Pixidi ad usum Pauperum : Et pro tertia offens. sua sic commissâ qd' talis Attorn' vel Clericus expellatur e Cur' hic secund' priorem Regulam peremptor' & general' fact' in consimili casu per Cur' in plena Cur' Die Mercur' prox' post tres Septiman' Stæ Trin' Anno Regni Domini Jacobi nuper Regis Angliæ, &c. Secundo, &c.

*De Termine Sti' Michaelis Anno 16 Car. II.
Regis.*

ORDINATUM est per Cur' qd' quilibet Attorn' hujus Cur' qui comparebit pro aliquo Defend' in aliqua Actione in qua speciale Ballium non requiritur affilabit commun' Ballium pro hujusmodi Defend' infra sex dies prox' post finem ejusdem Termin' de quo comperuit : Et qd' quilibet Attorn' hujus Cur' qui imponeret aliquod speciale Ballium coram aliquo Justic' hujus Cur' de bene esse super Cepi Corpus dabit notitiam inde indilate Quer' vel ejus Attorn'. Et si quer' non calumpniabit Ballium illud pro insufficienc' inde infra viginti dies prox' post notitiam ei vel ejus Attorn' inde datam tunc super Sacramentum præstit' in scriptis hujusmodi

jusmodi notitiæ in dorso ejusdem Ballii (pro quo Sacramento nullum feodum capt' fuerit) Ballium illud affilabitur per Attorn' Defend' infra quatuor dies prox' post finem præd' viginti dierum. Et quod quilibet Attorn' hujus Cur' qui imponeret aliquod speciale Ballium coram aliquo Justic' hujus Cur' de bene esse super brevi de Ha' Cor' si quer' non calumpniabit Ballium illud pro insufficienc' inde infra viginti & octo dies post impositionem inde tunc Ballium illud affilabitur per Attorn' Defend' infra quatuor dies prox' post finem viginti & octo dierum sub pœna qd' quilibet Attorn' defalt' facien' vel in non dando notitiam ut prædictum est vel in non affilatione separal' Ball' præd' vel eorum alicujus in forma præd' forisfaciet & solvet Pixidi hujus Cur' pro primo delicto suo Summ' quinq; solidorum, & pro secundo delicto suo expungetur e Rotulo Attorn' hujus Cur'.

Et ulterius ordinat' est ea intentione qd' Ballia præd' debet' affilantur qd' Clerici Justic' hujus Cur' in quorum manibus Ballia sic capt' de bene esse remanebunt infra sex dies prox' post finem cujuslibet Terminii dabant notam in scriptis Secundario hujus Cur' omnium Ball' de Terminio præceden' sic imposit' & in eorum manibus tunc remanen' una cum nominibus Attorn' qui Ballia illa imposuerunt & die impositionis eorundem.

Die Mercur' prox' post Quinq; Septiman' Pasch'
Anno 18 Car. II. Regis.

ORDINATUM est per Cur' qd' nulla placita specialia seu morationes in lege in aliqua causa hic in Cur' jam penden' vel postea prosequend' recept' fuerint per Clericos Papir' hujus Cur' antequam hujusmodi placita vel morationes in lege signat' fuerint manu propr' alicujus Conciliar' in ea parte retent':

Et

Et ulterius ordinat' est qd' Clerici Papir' hujus Cur' in omnibus Copiis placitorum & Libris papir' per ipsos faciend' subscribant hujusmodi Copiis placitorum & libris papir' nomina Concil' qui signaverint hujusmodi placita tam ex parte Quer' quam ex parte Defend'. Et qd' omnibus libris deliberand' Justic' hujus Cur' nomina Concil' qui signabunt placita illa tam ex parte Quer' quam ex parte Defend' subscript' forent hujusmodi libris per Clericos vel Attorn' qui libros illos delibarent.

Die Martis prox' post Octab. Sancti Trin. Anno 18 Car. II. Regis.

QUAM per antiquam Consuetud' hujus Cur' Regule ad respondend' dari & intrari debent cum Clerico Regularum hujus Cur' in omnibus Actionibus in Cur' hic prolat' & penden' Quæ quidem Cons' nuper neglect' fuit in Action' transgr' & Ejection' firmæ, pro evitacione cujus in futuro.

Ordinat' est qd' quilibet Attorn' hujus Cur' intrabit cum Clerico Regularum generalem Regulam ad respondend' in omni Actione Transgr' & Ejection' firmæ prolat' priusquam aliqua Motio fact' fuerit in Cur' pro Judicio vers' Casualem Ejectorem.

Die Luna prox' post Crastinum Ascens. Domini Anno 19 Car. II. Regis.

ORDINATUM est per Cur' qd' quilibet Clericus Philizar' & Attorn' hujus Cur' solvet Officiar hujus Cur' appunctuat' pro reception' filation' & custod' Billarum & Narration' hic in Cur' assidend' antiquum seod' duorum solid' in fine cujuslibet Termin' pro Salario suo pro

pro receptione filiationis & custodi Billarum & Narrationum predictarum secundum separatim Ordines hujus Curie prius inde in ea parte facti. Et si aliquis Clericus Philizar' vel Attorn' hujus Curie recusaverit solvere feodum illud super rationabili requisitione ei inde faciend' tunc hujusmodi Clericus Philizar' & Attorn' suspendatur a privilegio practicie sue in eadem Curie ad Discretionem Capitalis Clerici vel Secundari Curie illius.

Die Lune proximo post tres Septiman' Sancte Trin.

Anno 20 Car. II. Regis.

ORDINATUM est per Curiam quod quilibet Clericus hujus Curie Computabit separatim per se ad finem cuiuslibet Terminis secundum antiquas regulas hujus Curie inde facti. Et quod duo tres vel plures eorundem non insimul Computarent in nomine unius Clerici prout nuper usitat fuit.

Et ulterius Ordinatum est quod si aliquis Clericus hujus Curie signaret vel signari permetteret aliqua breviam seu affilaret vel affilari permetteret aliquos Rotulos in nomine suo pro aliquo alio Clerico hujus Curie qui retro exisset cum Computis suis in Officio tunc hujusmodi Clericus qui sic signaret vel signari permetteret aliqua talia breviam seu affilaret vel affilari permetteret aliquos tales Rotulos in nomine suo solvet Arreragium Computatorum Clericorum pro quibus aliqua talia breviam sic per ipsum signaret seu aliqua talis Rotulus sic per ipsum affilaret forent.

De Terminis Sancti Hillarii Anno Regni Car. II.

Regis 20 & 21.

ORDINATUM est per Curiam quod Exitus juncti de aliquo priori Terminis triati fuerint super prima vel secunda

secunda Sessione cujuslibet Terminis peremptoriis: Et
qd' Custos Brevium hujus Cur' non sigillabit aliquod
Recordum de Nisi prius triand' contra intentionem hu-
jus Regule.

Trin. 22 Car. II. 1670.

ORDINATUM est per Cur' qd' nullus Defend' qui
fu'it arrestat' virtute alicujus Processus e Cur' Domini
Regis coram ipso Rege emanant' compulsus fu'it impo-
nere Ballium pro majori Summa quam in hujusmodi
processu exprimitur.

Et ulterius Ordinatur est qd' si Quer' narrabit versus
Defend' super aliquod Ballium per ipsum imposit' pro
majori Summa quam exprimitur in processu super quo
Defend' arrestat' fu'it tunc Ballium sic imposit' non
onerabile fuerit in Actione illa.

*Die Mercur' prox' post Oñab' Pur' beat' Marie
Anno 25 Caroli II. Regis.*

ORDINATUM est qd' Officiari' hujus Cur' qui habent
custodiam sigilli Cur' permittant un' vel plur' person'
attendere omnibus temporibus sigillation' brevium
eiusdem Cur' ex parte Dom' Regis & impression' vel
signum super hujusmodi brevia sic sigillat' vel sigilland'
imponere quousq; Cur' hic ulterius ordinaverit ita qd'
nullum impedimentum perinde eveniat Officiari' præd'
in sigillatione brevium prædict'.

*Die Lune prox' post Oñab' Sti' Martini Anno
28 Car. II. Regis.*

ORDINATUM est qd' Mar' Marese' hujus Cur' pro
tempore existen' non permittet aliquam personam
quam-

quameuncq; in ejus custod' remanen' super aliqua Actione vel in Execution' vel pro aliquo Contempt' quocunque detent' infra dict' Prisonam vel infra Libertat' Regularum ejusdem Prisonæ ire extra eandem Prisonam vel Libertat' præd' absq; speciali Regula hujus Cur' in ea parte prius habit & obtent' periculo incumben'.

*Die Jovis prox' post tres Sept' Paschæ Anno
29 Car. II. Regis.*

ORDINATUM est per Cur' qd' nullum Ballium fu'it imposit' super brevi de Habeas Corpus priusquam breve ill' fu'it retornat'.

Et qd' quilibet Attorn' hujus Cur' qui imponet aliquod speciale Ballium coram aliquo Justic' hujus Cur' tempore impositionis inde deponeret in manibus Clerici Justic' coram quo hujusmodi Ballium sic fu'it imposit' feod' debit' pro affilatione Ballii ill' videlicet pro quolibet ballio super brevi de Habeas Corpus 4s. 10d. & pro quolibet Ballio super brevi de Ce' Cor' 2s. 6d. Et qd' Clerici Justiciar' in quorum manibus feod' ill' sic imposit', infra sex dies prox' post finem cujuslibet Terminii dabunt notam in Scriptis Secundar' hujus Cur' omnium Ballior' de Vacatione & Terminò præceden' sic imposit', una cum nominibus Attorn' qui Ballia ill' imposuer' & solverent eidem Secundar' feod' præd' per ipsos pro Balliis ill' in forma præd' recept'.

*Die Jovis prox' post Octab' Sancti Hillar' Anno
30 Car. II. Regis.*

ORDINATUM est qd' referetur Magistro Livesay ad examinand' quæ brevia signari debent per Philizar' hujus Cur' antequam talia brevia figillari debent.

Die

*Die Martis prox' post Crastin' Purification' beate
Marie Anno 31 Car. II. Regis.*

ORDINATUM est quod Brevia Originalia quæ de Jure signari debent per Philizar' huj' Curiz signata fuerint per eisdem Philizar' priusquam talia Brevia sigillentur per Officiar' hujus Curiz Et quoad alia Brevia in questione qd' referentur Magistro Astry & Magistro Livesay ad examinand' & ad certificand' Cur'.

*Die Sabbati post Crastinum Ascen' Dom' Anno
31 Car. II. Regis.*

ORDINATUM est qd' omnia brevvia & process. quæcunque super brevvia original' emanant ante comparenc' defend' signari debent per Philizar' hujus Cur' secundum consuetud' hujus Cur'.

*Die Sabbati prox' post Octab' Sta' Trin. Anno 31
Car. II. Regis.*

ORDINATUM est qd' null' Record' de Nisi prius pro Triatione Exit' ad Affizas sigilletur post finem trium Septimanarum prox' sequen' Clausum Terminis.

*Die Lune post Mens' Pasch. Anno 32 Car. II.
Regis.*

ORDINATUM est qd' Officiar' hujus Cur' qui habent custod' sigilli permitterent un' vel plur' person' attendere temporibus sigillation' brevium pced' Cur', & Impression' vel signum super hujusmodi brevvia sic sigillat' vel sigilland' imponere ex parte Jacobi Comit' Suff'

Suff' quosq; Cur' hic aliter ordinaverit ita qd' fiat absq; onere aliquibus Dom' Regis subdit' five impediment' Officiar' pnedict'.

Paf. 33 Car. II. Regis.

ORDINATUM est qd' regula fact' Termino Sancti Michaelis ult' pret'it' pro deliberatione Cop' de Err' & Record' superinde Justiciar' de Com' Banco, & Baronibus de Scaccario exoneretur.

Et qd' in futuro null' Cop' de Errore & Record' superinde deliberetur pned' Justiciar' vel Baronibus priusquam Attorn' pro Quer' super brevi de Error' per decem dies notitiam dabit Cleric' Error' in Camera Scaccarii qd' Error' in Record' assign' argueretur coram eisdem Justic' & Baronibus pro utraq; parte Et qd' Attorn' pro Quer' deliberabit quatuor Cop' Justiciar' de Com' Banco. Et Attorn' pro Defend' deliberabit quatuor al' Cop' Baronibus de Scaccario quatuor dies ante auditum Cause.

Die Lune post Quinden' Martini Anno 33

Car. II. Regis.

ORDINATUM est per Cur' qd' Regula hujus Cur' prius fact' pro affilatione Ball' observetur sub poena forisfactur' in eadem Regula mentionat'.

Et ulterius Ordinat' est qd' omnes Attorn' hujus Cur' qui deliberabunt vel deliberari causabunt aliquam narrationem in placito Transgr' & Ejection' firmæ alicui tenen' in possession' aliquarum terrarum seu tenement' prosequerentur breve de Latitat vers. casualem Ejectorem & assilabunt commune ballium pro eodem antequam signabunt Judicium vers. Casualem Ejectorem in aliqua tali Actione.

Pas. 36 Caroli II. Regis.

ORDINATUM est qd' omnia brevja de Error' retor-
nabil' coram Justic' de Com' Banco, & Baron' de
Scaccario in Camera Scaccarii indilate deliberentur
Cler' Error' pro tempore existen' quodque nemo tene-
bitur abstinere a Prosecutione Executionis prætaxis
alicujus hujusmodi brevis de Error' priusquam breve
deliberetur Cler' Error'. Et in Casibus ubi Speciale
Ball' requiritur, Nisi Quer' super tali Brevis de Erroro
infra quatuor dies post deliberation' inde impon' Bal-
lium secundum Legem, Defend' poterit protrahere ad
Executionem tali brevis non obstat.

*Die Mercurii prox' post tres Septiman' SanBe
Trin. Anno 1 Jac. II. Regis.*

ORDINATUM est qd' nullum Record' de Nisi prius
sigilletur per aliquem Officiar' hujus Cur' post duo-
decimum diem Julii prox' futur' quousq; exitus seu
para ejusdem intretur super Rotulum numerat' & hujus-
modi exitus ostendatur Secundar' hujus Cur', & per
ipsum Signat' foret & licentiat' fore Sigilland'. Et qd'
null' Rotul' numerat' deliberat' sint alicui persone
nisi Cler' Capital' Cler', & non alicui alteri Attorn'
sive Philizar'. Ac qd' null' Cler' Attorn' sive Phili-
zar' impofterum irrotulabit aliquam Indentur', Scriptum,
Breve de Errore, Exit' vel morae in lege super ali-
quem Rotulum Philizar'.

Die

*Die Veneris prox' post Mens' Pas. Anno 2 Jac. II.
Regis.*

ORDINATUM est qd' super lection' alsejus Record' hic in Cur' super moration' in Lege, speciali veredict' vel brevi de Errore & superinde dies dat est ad audiend' Concilium ambarum partium, Libri deliberentur Justic' hujus Cur' per spatium quatuor dierum ante diem sic per Cur' appunctuat' per Attorn' ex utraque parte. Et qd' Exceptiones quæ insisterentur super argumentum denotat' erunt in Margine eorundem Librorum.

*Die Lune prox' post Octab' Sancti Hillar' Anno
2 Jacobi II. Regis.*

ORDINATUM est qd' quilibet Desend' non existen' Executor vel Administrator qui prosecut' fuerit aliquod breve de Habeas Corpus ad remotend' aliquam sectam extra aliquam inferior' Cur' imposuerit Special' Balthum in omnibus Actionibus quibuscunque (Actionibus pro scandalosis Verbis, & minutis insult' tantummodo excepte) Nisi un' Justic' hujus Cur' aliter Ordinaverit.

Hil. 3 & 4 Jac. II. Regis.

I. ORDINATUM est qd' nullus admittatur in Forma Pauperis extra Cur'.

Eodem Die.

II. ORDINATUM est qd' null' Carrucæ seu Draiz transeant in *King-street Westm'* in Termino inter horam octavam & horam secundam.

*Die Veneris prox' post Mens' Pasc. Anno 4
Jac. II. Regis.*

QUIA constat Cur' qd' ratione negligentie Clericorum & Attorn' in non intrando & affiland' Warrant' Attorn' de Recordo diversa Judicia reuertantur ad grave dampnum Magistrorum suorum,

Ordinat' est qd' quilibet Cleric' & Attorn' hujus qui in posterum intrabit aliquam causam de Recordo intrabit in principio (Anglice, *the beginning*) cujuscunque causae sic intrat' Warrant' Attorn' pro Quer' & Defend' in talibus Causis aliter eorum Rotuli non affilientur nec recipiuntur,

*Die Veneris prox' post Crastin' Pur' beat' Mariae
Anno 1 W. & M. Regis & Reginae.*

ORDINATUM est per Cur' qd' pro quolibet Judicio cogn' per Warrant' Attorn' Ballium affiletur pro Defend' ad Warrantizand' hujusmodi Judicium vel in defectu inde Attorn' qui affilare debet Ballium ill' forisfaciat & solvat Pixidi Cur' decem solid' pro quolibet talio Ballio non affilat' & pro quolibet alio communi Ballio quod affilari debuit, & non affilatur, Attorn' pro Defend' forisfaciat & solvat Pixidi Cur' decem solid'. Et iidem respectivi Attorn' puniantur prout Justic' Cur' idoneum videatur.

*Die Martis prox' post Mens' Mich. Anno 2 W.
& M. Regis & Reginae.*

ORDINATUM est per Cur' in plena Cur' qd' nullus Attorn' sive Clericus attenden' hic in Cur' praesumat

deliberare alicui al' Attorn' vel Clerico attenden' hic in Cur' vel alicui al' persone, vel accipere ab aliquo Attorn' vel Clerico attenden' in Cur' hic vel aliqua al' persona, aliquod special' Placitum imponend' in Offic' Cleric' Papir' vel Copiam hujusmodi Placiti priusquam hujusmodi Placitum imposit' fuerit in Offic' Clerici Papir': Et qd' talis Copia postquam hujusmodi Placitum imponeretur fact' fuerit per Clericum in p'ed' Officio Clerici Papir' attenden' & signat' sub manu unius Clericorum ibidem attenden' sub p'ona qd' quilibet Attorn' vel Clericus in Cur' hic attenden' forisfaciet pro prima offens. sua sic commiss. decem solid' solvend' Pixidi ad usum Pauperum. Et pro secunda offens. sua sic commiss. viginti solid' solvend' similis Pixidi ad usum Pauperum. Et pro tertia offens. sua sic commiss. qd' talis Attorn' vel Clericus expelletur e Cur' hic secun' duas priores regulas peremptor' & general' in consimili casu per Cur' in plena Cur' fact' scilicet die Mercurii prox' post tres Septiman' Sanctæ Trin' Anno Regni Dom' Jacobi primi nup' Regis Angl', &c. secundo, acetiam die Mercur' prox' post tres Sept' Stæ Trin' Anno Regni Dom' Caroli Secundi nuper Regis Angl', &c. decimo sexto.

*Die Luna prox' post Octab' Sanctæ Trin' Anno
4 W. & M. Regis & Regina.*

I. ORDINATUM est qd' si aliquis Defend' voluntarie comperuit ad sectam alicuj' Quer' in aliqua actione quacunque hic in Cur' prosequend' talis comperenc' nullius vigoris & effectus habebitur nisi Attorn' pro tali Quer' infra quatuordecim dies post Diem hujusmodi Comperenc' prosecut' sit breve de Latitat' vel Billam Midd' ubi Defend' commoretur in Midd'.

*Die Sabbati prox' post Oñab' Sæ Trin' Anno
4 W. & M. Regis & Regine.*

II. CUM Clerici & Attorn' hujus Cur' non obstan' separalibus regulis & pœnis pro vera affilatione com' Balliorum hujusmodi co'ia Ballia affilari negligunt in magnum periculum Quer' & detriment' Capital' Clerici, pro remedio quorum,

Ordinat' est per Cur' qd' post finem hujus Terminii quilibet Clericus & Attorn' hujus Cur' qui erit Attorn' pro defend' solvet Attorn' pro Quer' super Junctione cujuslibet Exitus xviii d. pro co'i Ballio nisi idem Attorn' pro Defend' constare fac' Attorn' Quer' qd' co'e vel speciale Ballium est affilat'.

Et ulterius Ordinat' est qd' quilibet Clericus pro Quer' sup' computo suo pro intrationibus solvet secundar' hujus Cur' xviii d. sic per eum recept'. Et qd' quilibet Clericus & Attorn' qui faciat in contrarium hujus reg'le in aliqua parte respectivè forisfaciat' s. pro quolibet delicto solvend' Pixid' hujus Cur'.

Et ulterius Ordinat' est qd' omnes Clerici & Attorn' pro Quer' super signatione Judicior' per default' vel non inform' solvent Secundar' hujus Cur' xviii d. pro Com'i Ballio nisi prius affilat' fuisset & illi Octodecim denar' allocentur Quer' in Custag'.

*Die Martis prox' post tres Sept' Sæ Trin' Anno
4 W. & M. Regis & Regine.*

III. SUPRA querel' Officiarior' pro Custod' Sigilli hujus Cur' assignat' qd' separal' Brevia e Cur' hic indebite emanaverunt absq; Sigillation' eorundem per prius Officiar' in defraudation' ejusdem Sigilli,

Ordinat'

• Ordinatur est per Cur' qd' separal' Subvic' separal' Com' hujus Regni Angl' permittent' eosdem Officiarios ad scrutand' & inspiciend' omnia Brevia e Cur' hic emanat' & eis deliberat' & in eorum respectivis Custod' remanen' absq; aliquo feodo proinde solvend'.

*Die Veneris prox' post Mens' Pasc. Anno 5 W. & M.
Regis & Reginae.*

ORDINATUM est per Cur' (respect' habito cuidam Aet' Parliament' nuper edit' pro abbreviacon' Judic' (vocat' *Docketing of Judgments*) qd' omnes Clerici Capital' Clericorum hujus Cur' intulerint in Officium Capital' Clericorum præd' Rotulos suos de Termino Pasc' ad vel ante diem Martis prox' ante prim' diem Termin' Stæ' Trinitatis. Et qd' iidem Clerici intulerint in Officium præd' Rotulos suos de separalibus Terminis Stæ' Trinitat' Sti' Michaelis & Sti' Hillar' per spatium unius Septiman' ad minus ante diem Effon' cujlibet Termin' eorundem subsequen' Terminor'. Et qd' nullus Rotulus recipiatur vel affilatur post finem secundi Termin' absq; Regula hujus Cur' in ea parte obtinend'.

*Die Mercur' prox' post quinq; Sept' Pasch. Anno
5 W. & M.*

Reg. II. *Regula observand' in Cur' Dom' Regis & Dom' Reginae coram ipsis Rege & Regina in processu super narr' deliberand' Prisonar' in Custod' Gaolarum Ordinatur est prout sequitur.*

Qd' nulla Copia Narration' deliberetur Prisonar' in Custod' ante diem retorn' processu super quo Defend' capt' vel onerat' fuit in Custod'.

Qd' nulla Regula dat foret qd' Defend' in Custod' compareat & placitet alicui Narration' versus eum quosq; Sac'rum in Scriptis sit affilat cum Clerico Regularum de deliberation' Copiæ talis Narration' & de tempore quando & persona cui eadem Copia deliberetur & qd' Defend' arrestat' fuit vel onerat' in Custod' per processum ab hac Cur' retornabil' ante deliberation' talis Copiæ & qd' tempus affilation' hujusmodi Sacrament' intret' super Sacrament' illud per Clericum Regularum. Et qd' Copia illius Sacramenti producat' coram Prothonotar' vel Secondar' ante signationem Judicii.

Qd' si Copia Narration' deliberetur vers. talem Defend' ante Mens' Pas. vel Crastinum Animarum & Sacrament' superinde fiat & affiletur', Et Defend' non compareat adinde infra decem dies prox' post finem Terminorum Sancti Michael' & Pas. respectivè Judicium reddetur vers. ipsum si Regulæ dat' fuer', sed si ipse compareat ante finem decem dierum post Terminum ipse habebit Licenciam interloquendi usq; prox' Termin' Nisi actio locetur in London' vel Middlesex. & Defend' sit in Custod' infra quadraginta Milliar' Civitat' London' vel Westm', tunc licet Defend' compareat ante expiration' decem dierum post finem Termin' ipse placitabit duos dies ante diem Esson' prox' Termin'. Et in defectu inde (Regulus dat' Existen') Judicium intretur vers. eum ut prædict' est.

Qd' si Copia Narrationis deliberetur vers. talem Defend' super vel post Mens' Pas. in Termino Pas. vel Crastin' Animar' in Termino Sti' Michaelis vel in Terminis Sti' Hillarii vel Stæ' Trinitatis. Et superinde Quer' daret Regulam comparere & pro Respons. tunc si Defend' compareat infra duos dies præceden' diem Esson' prox' Termin', ipse habeat Licenciam interloquendi usq; dictum prox' Termin', sed si ipse non compareat

compareat infra tempus illud Judicium vers. eum reddetur.

Qd' si Breve sit' retornabil' in aliquo Termino & Copia Narration' deliberetur ante diem Eflon' prox' Termini Quer' in tali prox' Termino possit dare Regulam ad comparend' & respondend'. Et si Defend' non compareat & placitet super effluxionem Regularum Judicium versus eum reddetur.

Qd' si Narratio non affiletur ante finem Termini prox' postquam Breve vel Processus (per quæ Prisonar' capt' fuit vel onerat' in Custod') sit retornabil' & Sacramentum fact' & affilat' modo supradict' ante finem viginti dierum prox' post talem Terminum hujusmodi Prisonar' exonerabitur per Com' Ballium signand' per un' Justic' hujus Cur'.

Qd' si aliquis Custos Gaolæ sive Prisonæ qui recepit Copiam Narrationis versus aliquem Prisonar' in sua Custodia eandem conclabit & non statim deliberet tali Prisonar', fiat Breve de Attach' versus eum,

Die Jovis prox' post tres Septiman' Sti' Mich.

Anno 5 W. & M. Regis & Reginae.

ORDINATUM est per Cur' qd' quilibet Attorn' hujus Cur' qui prosecut' fuit aliquod Breve de Error' ad revocand' aliquod' Judicium hic in Cur' obtent' in quo speciale Ball' imponi debet post impositione talis Specialis Ballii dabit notitiam inde indilate Defend' in brevi de Error' vel ejus Attorn'. Et qd' si præd' Defend' non calumpniabitur Ballium ill' pro insufficienc' inde infra viginti dies prox' post notic' ei vel ejus Attorn' inde dat' tunc talis Recogn' allocabitur.

Die

*Die Mercurii prox' post 15 Sti' Hillarii Anno
5 W. & M.*

ORDINATUM est qd' quilibet Prisonar' qui Commissus fuit Custod' Mar' hujus Cur' virtute alicujus Brevis de habend' Corp' ad respondend' vel ad faciend' & recipiend' remanebit in actual' Custod' ejusdem Mar' per spacium duorum dierum prox' post talem Commissionem talis Prisonar' eidem Mar' non obstante aliquo alio Brevi de habend' Corp' ad respondend' vel ad faciend' & recipiend' extra aliquam al' Cur' emanant' eidem Mar' deliberand' & allocand'.

*Die Sabbati in quinden' Sti' Hillarii Anno 6 W.
& M.*

ORDINATUM est qd' omnes Fines debit' Domino Regi & Dominæ Reginæ in Cur' ipsorum Dom' Regis & Dom' Reginæ, pro aut super omnibus actionibus pro debit' & Actionibus pro dampnis in Cur' præd' prosecut' recipiantur & colligantur sicut antea.

*Die Veneris prox' post Crast' Stæ' Trinitatis Anno
8 W. tertii Regis.*

I. ORDINATUM est qd' super emanatione alicujus brevis de Scire fac' super aliquam Sectam hic in Cur' penden' null' Breve de alias Scire fac' superinde emanabit quousq; primum Breve de Scire fac' retornabile existit. Et si aliquod Breve de al' Scire fac' prosecut' fuit in contrarium tunc hujusmodi al' Scire fac' vacuum fit.

Eodem

Eodem Die.

II. ORDINATUM est qd' super aliquam Referenc' per Cur' hic fact' Secundar' hujus Cur' ad retornand' aliquam Juratam seu nominand' quadraginta & octo suffic' Jur' ad triand' aliquem exit' hic ad Barr' in præsencia Attorn' ambarum partium si Attorn' ex una parte defalt' fec'it ad comparand' coram eodem Secundar' tempore per ipsum appunctuat' pro nominatione Jur' præd' seu ad extraposition' duodecim de utraq; parte in tali Casu idem Secundar' nominabit Jur' præd' in absentia Attorn' qui defalt' inde fec'it & extraponet ex iisdem quadraginta & octo Jur' duodecim ex utraq; parte. Et resid' Jur' retorn' foret per Vicecom' ad triand' Exit'.

Reg. 3. — 8 W. III. 1696.

Midd. ff. J. Doe de *Issingt'* in Com' præd' Gen.
traditur in Ball' super Cepi Corp' J. Denn
A. B. de *Hackney* in Com' præd' Gen. R. Fenn
Attorn' de *Highgate* in Com' præd' Gen. ad sectam
pro Def. R. Doe

Cap' & Cognit' — die
— 1696 coram A. B.
un' Commissionar' &c.

Die Lunæ prox' post Crast' Ascen' Dom' Anno
9 W. Regis.

ORDINATUM est qd' nullus Rotulus placitorum affiletur post finem prox' subsequen' Termin' de quo affilari debuit, Nisi licentia ad hoc faciend' dat' fu'it
per

per Regulam Cur' & Secondar' talem Regulam subscripserit.

Die Mercurii prox' post tres Septim' Sta' Trin.

Anno 9 W. tertii Reg'.

ORDINATUM est qd' si Judicium reddit' sit versus aliquem Defend' existen' Prisonar' in actual' Custod' Mar' hujus Cur' si idem Defend' minime onerat' fu'it in Custod' ejusdem Mar' super eodem Judicio in Executione ante finem secundi Termin' post Judicium versus eundem defend' obtent' (null' Brevi de Errore superinde penden') qd' tunc Commune Ballium affilabitur pro tali Defend' super notitiam inde Attorn' pro Quer' in tali Judicio prius dand'.

Die Sabbati prox' post Oñab' Sti' Martini

Anno 9 W. tertii Regis.

ORDINATUM est qd' omnes & singul' Cler' Capital' Cleric' hujus Cur' intul'int separales Rotulos de hoc instante Termino ante diem Eßon' prox' Termin', Ita qd' affilentur de isto Termino Acetiam Rotulos de Termino Sancti Hillarii ante diem Eßon' Termin' Paschæ prox' sequen' Et Rotulos de Termino Paschæ prox' sequen' ante finem Termin' Sanctæ Trinitatis prox'. Et Rotulos de Termino Sanctæ Trinitatis ante diem Eßon' Term' Sancti Michaelis prox' ad affiland' similiter. Et sic quolibet Termino successivè: Et qd' nulli Rotuli de cætero recipiantur post separalia tempora supradict' absq; Special' Reg' Cur' in contrar' obtinend'.

Die

*Die Veneris prox' post Crast' Stæ Trin. Anno
10 W. tertii Regis.*

ORDINATUM est qd' omnes & singuli Cler' Capitalis Cleric' hujus Cur' intulerint Rotulos de quolibet Term' Pasch' hic in Cur' ante primum diem cujuslibet Terminii Sanctæ Trinitat', Ita qd' iidem Rotuli affilantur.

Et ult' ordinat' est qd' separal' Rotuli de ult' Terminio nondum affilat' prolat' erint hic in Cur' indilate per separal' Clericos præd', ita quod tal' Rotuli affilantur de eodem Terminio.

*Die Jovis prox' post Octab' Stæ Trin' Anno
10 W. tertii Regis.*

ORDINATUM est qd' null' Ballium fu'it imposit' super aliquo Breve de Hab' Corp' priusquam Breve illud' fu'it retornat'. Et qd' tale Ballium non capt' fu'it per aliquem Justiciar' hujus Cur' Nisi Breve ill' cum retorn' inde oblat' fu'it coram Justiciar' præd' tempore impositionis inde ad affiland'.

*Die Mercur' prox' post quinq; Septiman' Paschæ
Anno 11 W. tertii Regis.*

I. ORDINATUM est qd' si aliquis Querens hic in Cur' morabitur in lege aliqui placito rejunctioni vel rebutter per aliquem Defend' hic in Cur' exhibit' & talis Defend' jungit in tali moratione in lege qd' tunc Attorn' pro Quer' intrabit de Recordo talem moration' in lege. Et in defect' inde super Regulam per Secondar' hujus Cur' dat' pro intration' talis morationis in lege Attorn' pro Defend' intrabit de Recordo talem morationem.

Eodem

Eodem Die.

II. ORDINATUM est qd' in aliqua Actione hic in Cur' prolat' ubi Defend' secund' Cursum hujus Cur' Special' Ballium imponere debet qd' talis Defend' in separalibus Terminis Sti' Hillarii & Stæ' Trinitat' habebit licentiam ad imponend' sufficiens Ballium ad Sectam alicujus Quer' ante diem Continuation' per Secundar' hujus Cur' appunctuand', post Clausum Terminor' præd'. Et qd' infra tempus præd' Quer' non prosecut' fu'it aliquem Process. versus Defend' vel ejus manucaptos sup' Scriptum obligator' Vic' vel Ball' libertat' dat pro comparenc' Defend'.

Et ulterius Ordinatur est qd' in separalibus Terminis Sti' Michaelis & Paschæ si Defend' arrestat' fu'it infra Civit' London' vel Com' Midd' super aliquem Process. extra Cur' hic emanant' qd' Defend' h'ebit licentiam ad imponend' sufficiens Ballium ad Sectam Quer' ad aliquod tempus infra octo dies prox' post retorn' hujusmodi Brevis vel præcept' & infra quatuordecim dies prox' post retorn' alicujus Brevis in aliquo al' Comit'at' prosecut'.

Die Jovis post Crastin' Pur' beat' Mariæ Anno

II W. tertii.

ORDINATUM est qd' omnia facta & Indentur' in Cur' hic vel coram aliquo Justiciar' hujus Cur' cognit' de cetero imperpet' irrotulentur inter Rotulos Capitalis Clerici hujus Cur' ad placita irrotuland' assign' & non alibi. Quodq; quælibet persona aliquod tale fact' vel Indentur' in posterum in Cur' hic irrotuland' cognoscen' comparebit publicè in Cur' & hujusmodi factum vel Indentur'.

dentur' cognoscet in aperta Cur' quodq; quodlibet factum cognit' coram aliquo Justic' extra Cur' prolat' fu'it hic in Cur' per hujusmodi Justic' propriis manibus ad irrotuland'.

Die Jovis prox' post tres Septiman' Stæ Trin'

Anno 1 Annæ Regiæ.

I. ORDINATUM est qd' si aliqua persona sive personæ existen' vel in posterum devenien' Pleg' sive manucaptor' in Cur' hic pro aliquo Defend' in aliquo Actione quacunque & impl'itat' fuerit per Actionem Debiti super Recogn' in hujusmodi Secta cognit' hujusmodi persona sive personæ habebunt licentiam ad reddend' hujusmodi Defend' Custod' Mar' hujus Cur' in exoneratione manucaptor' suor' per spatium octo dierum integror' in pleno Termino prox' post retorn' Brevis de Latitat vel al' Process. versus hujusmodi manucaptor' prosecut'. Et super notitiam indē dat' Quer' vel ejus Attorn' in Secta præd' cess. omnis ulterior Process. versus hujusmodi Pleg' sive manucaptor' super Recogn' præd'.

Eodem Die.

II. ORDINATUM est qd' ubi aliquis Defend' in aliqua Actione hic in Cur' penden' reddit' fu'it Custod' Mar' hujus Cur' in exoneratione manucaptor' suor' Attorn' pro tali Defend' indilatē dabit notitiam de tali redditione Attorn' pro Quer' & præstit'it Sacramentum inde priusquam Ball' in Actione illa fuit assilat' seu exonerat' & in defectu inde talis redditio vacua erit.

Die

*Die Mercurii prox' post tres Sept' Stæ Trin'
3 Anno Annæ Reginae.*

ORDINATUM est qd' ubi aliqua persona reddet se in Cur' hic vel coram uno Justic' hujus Cur' in exoneratione manucaptor' suorum vel duct' fu'it super Breve de Hab' Corp' hic in Cur' vel coram Justic' præd' in ordine ad committend' Custod' Mar' hujus Cur' tale Reddidit se vel Breve de Hab' Corp' una cum retorn' inde remaneat cum Secundar' hujus Cur' vel Clerico Justic' coram quo talis persona reddit' vel duct' fu'it fore affiland'. Et qd' Copia sive nota tantum talis reddition' vel retorn' Brevis de Hab' Corp' sub manu talis Justic' vel Secundar' deliberat' fu'it Mar' hujus Cur' tempore commiss. talis personæ Custod' suæ. Et talis Copia sive nota fact' & preparat' fu'it per personam sic se reddend' vel prosequen' tale Breve de Hab' Corp' vel per Attorn' suum ex parte sua.

*Die Martis prox' post Octab. Sancti Martini Anno
quarto Annæ Reginae.*

ORDINATUM est qd' si Defend' in aliqua Actione in London' vel Midd' & ad Session' Domini Capitalis Justic' huj' Cur' triand' intrabit ne recipiatur & Ratione ne inde impediatur Quer' qd' non procedere possit ad eandem Session' quod tunc bene licuit eidem Quer' ad procedend' ad triationem in Causa prædicta ad prox' Session' dicti Capitalis Justic' post Intrationem de præd' ne recipiatur super Notic' durante prædicta prima Sessione dand'.

Die

*Die Sabbati prox' post Mens' Pasche Anno 5
Anna Reginae.*

ORDINATUM est qd' Special' Li' Lo' non allocetur
Defend' sine licenc' hujus Cur' prius obtent'.

*Die Mercurii prox' post tres Septiman' Sti' Michaelis
Anno 5 Anna Reginae.*

II. ORDINATUM est (in Prosecution' cujusdam
Actus Parliamenti nuper edit' & provis. ad compellend'
separat' Attorn' hujus Cur' affilare Warrant' sua At-
torn') Qd' Attorn' pro Defend' tempore comparenc'
sue pro tali Defend' dabit Attorn' pro Quer' Warrant'
Attorn' pro tali Defend'. Et tempore deliberation'
Copie Narration' vel Allocation' inde ex Officio ubi
affilatur, solvet quatuor denar' pro dicto Warrant' At-
torn'. Quod quid'm Warrant' Attorn' præd' Quer'
affilabit cum Officiar' appunctuat' pro affilatione inde
eodem tempore quo affilat vel affilare debet Warrant'
Attorn' pro Querente. Et si talis Attorn' pro Defend'
recusabit solvere Attorn' pro Querente dict' quatuor
denar' pro Warrant' Attorn' præd' modo & forma su-
pradiet' tunc tal' Attorn' pro Querente super tal' Re-
cusation' signare poterit Judicium versus Defend' in
tali Actione per Defalt'.

*Die Jovis prox' post quinden' Sti' Martini Anno
5 Anna Reginae.*

III. ORDINATUM est qd' si aliqua persona sive per-
sonæ existen' arrestat' super aliquod Breve de Latitat'
B b sive

five aliquem al' Process. e Cur' hic emanan' retornabile
 hic in Cur' ante tres Septimanas Paschæ in Termino
 Paschæ vel Mens' Michaelis in Termino Sti' Michaelis
 & Defend' comparebit & imponet Co'e five Speciale
 Ball' superinde, & Quer' narraret in aliqua Actione
 quacunque & locaret Actionem suam in London' vel
 Comm' Midd' qd' tunc si Narratio deliberat' fu'it At-
 torn' pro Defend' vel affilat' seu relict' in Officio ante
 diem Esson' Mens' Paschæ in Termino Paschæ & ante
 diem Esson' Crastin' Animar' in Termino Sti' Mi-
 chaelis, tunc Defend' in tali Actione super Regulas
 dat' placitabit ad exitum de eodem Termino quo Nar-
 ratio deliberat' affilat' seu relict' existit per spatium du-
 orum dierum prox' ante diem Esson' prox' Terminu
 aliter Judicium intrari poterit per Defalt' sed si Narratio
 non deliberat' affilat' seu relict' fu'it usq; post præd' se-
 paral' dies Esson' in quolibet Termino Paschæ & Ter-
 mino Sti' Michaelis tunc Defendens habebit licentiam
 placitandi usq; prox' Terminum secundum antiquam
 consuetud' hujus Cur'.

*Die Mercurii prox' post Octab' Sanctæ Trin. Anno
 sexto Annæ Reginae.*

Quon' ubi aliquis Defend' existen' prisonar' in
 Custod' Mar' huj' Cur' super medium processum capt'
 & detent' fuerit in Custod' alicujus Vic' huj' Regni
 Virtute Warrant' Justic' hujus Curizæ pro Evassione e
 Custodia Mar' præd' fact'.

Ordinat' est. quod querens in tali Actione narrabit
 versus eundem Def. in Custod' talis Vic' ante finem
 secundi Terminu post hujusmodi Captionem & De-
 tentionem aliter fiat supersedeas pro eodem Defend'.

Dis

*Die Veneris prox' post Crastin' Animar Anno
8 Annæ Regine.*

I. ORDINATUM est quod ubi aliquis Defendens arrestat' fuerit per Vic' London vel Com' Midd' per Process. e Cur' hic emanant' & dabit tali Vic' Scriptum obligator' pro comparenc' sua ad diem Retorn' hujusmodi Process. talis Defend' habeat Licenc' per quatuor dies post Retorn' ill' ad imponend' bon' manucapt' ad sectam Quer' in tali process. & infra tempus ill' cesset omnis process. super script' obligator' Vic' Et in Casu Arrestationis alicujus Defend' infra aliquem alium Com' hujus Regni per Processum e Cur' hic ut præferatur emanant' talis Defend' habeat Licenc' per sex dies ad imponend' bon' manucapt' post Retorn' talis processus sine aliqua prosecutione quacunq; super script' obligator' Vic' interim fiend'.

*Die Martis prox' post Crastinum Animarum
Anno 8 Annæ Regine.*

II. ORDINATUM est quod nulla Exceptio ad Speciale Ballium coram aliquo Justic' hujus Curiz impositum imposterum facta fuerit post viginti dies post Notic' talis Ballii impositi secundum Consuetud' huj' Curiz dat' Et quod Exceptio post tempus illud facta vacua fuerit & nullius Vigoris.

*Die Mercurii prox' post tres Septiman' Sanctæ
Trin' Anno 2 Georgii Regis.*

ORDINATUM est per Cur' quod si aliquis Defendens commiss. fuerit Custod' Mar' huj' Cur' vel onerat'

fuerit in Custod' ejusdem Mar' vel arrestat' vel commiss. fuerit virtute processus huj' Curiz Custod' alicuj' Vic' sive al' Officiar' cujuscunque ad sectam alicuj' Quer' & sic in Custod' remanebit per duos Terminos & Quer' non narrabit versus talem Defend' infra Temp' illud' quod talis Defend' post finem secundi Termini post tale imprisonamentum exonerabitur extra Prisonam qua sic detentus erit super affilationem communis Ballii signat' per un' Justic' huj' Cur' absq; Notic' Quer' vel ejus Attorn' dand'.

Et si talis Quer' narrabit versus talem Defend' Prisonar' in Custod' Mar' hujus Cur' vel alicuj' Vic' vel al' Officiar' ut præfertur remanen' & non procedet ad Triationem sive Judic' infra tres Terminos prox' post talem Narrationem deliberat' vel si aliquis Quer' obtinebit' Judic' in Cur' hic in aliqua Actione versus aliquem Defend' Prisonar' & non onerabit præd' Defend' sic in Prisona remanen' in Executione super Judic' sic obtent' infra duos Terminos prox' post tale Judic' sic habit' & obtent' tunc talis Defend' sic in Prisona remanens habebit Licenc' ad affiland' commune Ballium vel ad prosequend' Breve de supersedeas e Cur' hic secundum Consuetud' huj' Curiz pro Exoneratione sua e Custod' præd' ubi sic detent' fuerit per un' Justic' huj' Cur' concedend' si Causa ei non ostensa fuerit in contrar' per Quer' vel ejus Attorn' super Notic' eis vel eorum alteri per Attorn' pro Defend' dand' & Sacrament' ejusdem Notic' fiend' si idem Quer' non comparebit coram Judice præd' ad impediendum affilationem communis Ballii præd' seu confessionem præd' Brevis de supersedeas.

*Die Luna prox' post Octab' Purificationis beatae
Mariae Anno 8 Georgii Regis.*

Quod cum magnae Dilationes saepe contingunt Querentib' in eorum sectis in Cur' hic ratione Moration' in Lege per Attorn' pro Defend' postquam iidem Quer' obtuler' Exit' per patriam triand' super placita eorundem Defend' placitat' & deliberaverunt Libros Papir' cum Noticia triationis secundum Cons. huj' Cur' eo qd' post Judic' per Quer' obtent' super talem Morationem in Lege non remanet Tempus sufficiens in Termino ad dand' Notic' Brevis de Inquir' de Dampnis exequend' infra Terminum quo Judic' sic obtent fuerit Ideo ordinatum est in futuro qd' in omni Casu ubi Quer' concludit ad patriam super placitum Defend' & dabit Noticiam Triationis Exitus super librum papir' ut praefertur & superinde Defend' ad impediend' Triationem Exitus morabit in Lege super Replicationem vel placitum Quer' & Quer' jungeret in tali Moratione & superinde obtinebit Judic' Attorn' pro Defend' tent' fuerit accipere Noticiam Brevis de Inquir' de Dampnis exequend' a tempore Notic' triationis super librum Papir' dat' ut praefertur.

*Die Mercur' prox' post Tres Septimanas Sanctae
Trin. Anno secundo Georgii II. Regis.*

ORDINATUM quod in omni Causa qua speciale vel Commune Ballium affilabitur & Notic' inde dabitur Attorn' pro Quer' Copia Narrationis deliberata fuerit Attorn' pro Defend' qui solvet proinde secundum usualem Ratam sed si Attorn' pro Defend' vel ejus Clericus in Absentia dicti Attorn' recusabit solvere pro tali Copia vel si acciderit locum habitationis dicti Attorn'

ignot' fore Attorn' pro Quer' tunc licebit relinquere talem Copiam cum Officiar' hujus Curie pro Affiliatione Narration' appunctuato & Notie inde indilate detur ipsi Defend' vel ejus Attorn' & talis Narr' habebitur rite deliberat' a tempore talis Notitie tantum.

*Die Mercur' prox' post Octavas Purificationis
beate Marie Anno 2 Georgii secundi Regis.*

I. ORDINATUM est qd' ubi aliquis Defendens ar-
restat' fuerit virtute alicuj' Processus e Cur' hic ema-
nan' in quo Causa Actionis specialiter specificata &
expressa fuerit vel copia talis Processus deliberata fuerit
alicui Defend' juxta Formam Statuti in hujusmodi Casu
nuper editi & provisum & Quer' superinde narrabit De-
fend' in tali Casu non habebit Licenciam interloquendi
sine Licenc' Curie in ea parte prius concedenda sed
placitabit adinde infra Tempus per Consuetudinem
Curie allocat' Defend' per breve original' prosecut' &
in Defectu inde Judicium intretur versus talem Defend'
per Defaltam.

Eodem Die.

ACETIAM Bill' ip'ius Quer' v' prefat' D. pro Ll
pro diversis Bon' Mercimon' & Merchandiz' eidem D.
per prefat' Q. vendit' & deliberat' secundum Cons.
&c.

Tam pro divers. Bon' Mercimon' & Merchadiz'
vendit' & deliberat' quam pro divers. Denar sum' per
eund' Q. pro eodem D. & ad usu' ip'ius derogat' &
extrapoit'.

Tam pro divers. Denar sum' eidem D. per prefat'
Q. mutuo dat' & accommodat' quam pro divers.
Denar

Donar' sum' per eundem D. pro eodem Q. & ad usu' ip'ius Q. h'it' & recept'.

De pl'ito quod reddat ei Cl. quas ei debet & injuste detinet.

De pl'ito quod teneat ei Convenc'on inter p'fat' Q. & predict' D. fact' juxta forma' & effect' cujusdm' Indentur' inter eos confect'.

De eo quod predict' D. Vi & Armis in ip'm Q. insult' fec' & ip'm verberavit vulneravit & maletractavit ad Dampnum ip'is Q. XI.

— Promisit solvere p'fat' Q. vel ordin' sum' Cl. super demand.

*Die Lune prox' post Crast' Ascen' Dom' Anno 2
Georgii secundi Regis.*

ORDINATUM est qd' in omnibus Causis per breve Original' prosecut' ubi Speciale Ballium imponatur si Quer' calumpniari vellet tale Ballium Calumpniatio inde intrabitur in libro Filizar' & Notic' inde detur indilate Attorn' pro Defend' prout requiritur in Causis per Billam prolat'.

*Die Veneris prox' post quinden' Sti' Martini Anno
tertio Georgii secundi Regis.*

Regula Generalis.

ORDINATUM est per Curiam quod in futuro separal' Ordines sive Regulæ his inferius script' & stabilit' secundum direction' cujusdam Actus Parliamenti in Anno Regni Domini Georgii secundi nunc Regis Magnæ Britan', &c. secundo fact' & edit' intitulat',
An Act for the Relief of Debtors with respect to the Im-

prisonment of their Persons, bene stricte & fideliter ob-
servat' & conservat' fuerint tam pro Mar' Marefc'
hujus Curiz & omnes, Officiar' & servos suos quam
per omnes Prisonar' qui modo sunt vel in futuro de
tempore in tempus fuerint commissi. Custod' præfat'
Mar'.

Et ulterius Ordinat' est quod hæc Regula cum se-
 paral' Ordinibus sive Regulis prædict' hic inferius
 script' affix' erit in maxime publico loco infra Prisonam
 hujus Curiz communiter vocat' *The King's Bench*
Prison pro usu beneficio & inspectione Prisonar' infra
 Prison' prædict'.

Per Curt,

A D D E N D A.

MICH. TERM, 13 Car. II. 1661.

[That the Keepers of the Seal allow to every Clerk of the Chief Clerk and his Clerk the Sealing of one Writ *gratis* every Term.]

“ **W**HEREAS at the complaint of the
 “ Clerks of the Chief Clerk of this
 “ Court, and their Clerks, this Court is
 “ given to understand and be informed,
 “ that whereas, according to the use and
 “ custom of this Court antiently used, the
 “ Keepers of the Seal of our Lord the
 “ King for this Court, have allowed and
 “ used, and ought to allow to every Clerk
 “ of the Chief Clerk of this Court, and
 “ every Clerk of such Clerk, at the end
 “ of every Term, the Sealing of one
 “ Writ *gratis*, without any thing to be
 “ paid for the same, by the name of *Je*
 “ *vous prie* ; and that such allowance, by
 “ such

“such Keepers of the Seal aforesaid, hath
 “been lately denied and detained;” It
 IS ORDERED, That the allowance afore-
 said to the said Clerks, according to antient
 use of the Court here, for the future be
 allowed by the Keepers of the Seal of our
 Lord the King for this Court, unless the
 said Keepers of the Seal shall shew cause to
 the contrary, on *Monday* next after the
 Morrow of All Souls.

MICH. TERM, 34 Geo. III.

[That all Interrogatories filed and exhibited in
 consequence of any Rule of Court, be signed
 by Counsel.]

“WHEREAS it sometimes happens that
 “persons against whom Attach-
 “ments have been ordered by this Court
 “escape the punishment due to their of-
 “fences, in consequence of the insufficiency
 “of the Interrogatories exhibited to them;
 “and whereas it is essential to the due admi-
 “nistration of Justice, that Interrogatories
 “should be so framed as to procure a full,
 “fair,

“ fair, and *bonâ fide* investigation of the
“ whole subject of alleged criminality;”

IT IS ORDERED, That for the future, all
Interrogatories filed and exhibited in con-
sequence of any Rule or Order of this
Court, shall be signed by Counsel.

*Order of the Lord Chief Justice, printed at
the Foot of the Sittings Paper for Hilary
Term 1794.*

[When Causes shall be entered, and Records
brought in for Trial at the Sittings after Term
in *London* and *Middlesex*.]

THE Lord Chief Justice has been pleased
to order, that in future all Causes to
be tried at the Sittings after Term shall be
entered, and the Records delivered to the
Marshal, at the times following; *viz.* the
Causes in *Middlesex* the first day of the
Sitting after Term in *Middlesex*, and the
Causes for *London* two days before the
adjournment-day in *London*.

and have the investigation of the
of which is the subject of this
It is ordered, That for the future, all
interrogatories shall be exhibited in con-
formance of any Rule or Order of this
Court shall be signed by Counsel.

Order of the Court, That the
the first of the January Term for Hilary
Term 1794.

[When Counsel shall be entered, and Records
brought in for Trial at the said Term
in London and Middlesex.]
That the Lord Chief Justice has been pleased
to order, that in future all Cases to
be tried at the Spring Term 1794 shall be
entered, and the Records delivered to the
Marshal at the times following, viz. the
Cases in Hilary the first day of the
Spring after Term in Middlesex, and the
Cases for London two days before the
adjournment-day in London.

I N D E X.

A.
 ABATEMENT.

SEE IMPARLANCE, 4. PLEAS, PLEADING, 6, 7.

ACCOUNT.

1. At what times and in what manner Clerks in Court shall account with the Secondary, and how punished for omitting so to do, 101. 111. 123.
2. An explanation of the Rules, requiring Clerks in Court to account with the Secondary, 102.

AC ETIAM.

1. That in all Writs issued against Bail on their Recognizance, an *Ac Etiam* of the cause of action be inserted, or the Defendant not bound to accept a Declaration, 264.
 2. Several forms of *Ac Etiam*s to be inserted in Bailable Writs, 223.
- See ARREST, 1.**

ADDITION.

I N D E X.

ADDITION.

1. That the true Addition, &c. of Defendants be inserted in all Actions of Trespass *vi et armis*, and *contra pacem*, 110.
2. *This Rule applies only to Suits commenced by Original Writ, and the reason of making it no longer existing, the Rule is become obsolete*, 110.

See AFFIDAVIT, 1, 2.

AFFIDAVIT.

1. That the true place of abode, and addition of every person making Affidavit, be inserted therein, 106.
2. *Every Affidavit must be entitled of the Court and Cause to which it applies, or it cannot be read*, 106.
3. No Affidavit, sworn before a Commissioner for taking Affidavits, to be read, unless filed, and a copy thereof made by the Clerk of the Rules, 253.
4. *Such Affidavits are by Statute directed to be filed, as a requisite to their being used*, 253.
5. *If a Plaintiff have several causes of action against one or more persons, in order to hold to special Bail in such actions, he must make distinct Affidavits, and sue out distinct Writs*, 270.
6. What the *Jurat* of an Affidavit sworn by an illiterate person before a Commissioner, shall state, 313.

See PRACTICE, 6.

AMENDMENT.

1. That the Plaintiff may amend his Declaration after entry thereof, paying costs, or giving an Imparlance at his election, if the Amendment be of a small matter that it deface not the Roll, 68.

I N D E X.

2. *Though a Plaintiff cannot regularly move to change the Venue, yet he may, in effect, do it by moving to amend his Declaration, 53.*

A P P E A R A N C E.

See BAIL, COMMON.

A P P O I N T M E N T.

See MASTER'S APPOINTMENT, 1, 2. MONEY paid into COURT, 3.

A R G U M E N T.

1. At what times, by whom, and in what manner Books shall be delivered to the Judges before Argument of Demurrers, Special Verdicts, and Writs of Error, 19. 84. 120. 132. 137.
2. *The practice now is to deliver copies of the books to the Judges only two days before Argument, and not to mark the Exceptions intended to be insisted upon in the margin, as directed by Rule East. 2 Jac. 2. 138.*
3. When causes which ought to be entered in the Court Book of the Clerk of the Papers shall be so entered, 88.
4. When a Defendant's Attorney may enter the Plaintiff's Demurrer of record, 176.
5. *When Issue is joined in Demurrer, either party may proceed to Argument, and how a Defendant in such case must proceed, 176.*
6. Causes entered for Argument to come on in the order they stand in the paper, and remain entered until they be argued; and that no cause be put off, without a special application to the Court, made before the day it stand for Argument, 272.

See DEMURRER, 1, 2.

A R R E S T.

I N D E X.

ARREST.

1. That no writ, with a clause of *Ac Etiam*, issue against any Heir, Executor, or Administrator, nor in any case where, by the course of the Court, Special Bail be not required; and if a Defendant be once lawfully delivered from Arrest, he be not again arrested, 107.
 2. *The several cases to which this Rule, in the latter branch of it, does and does not apply*, 108.
 3. *A Defendant may be held to Special Bail in an Action upon a Judgment for 10l. damages and costs, though the original debt were under that sum*, 109.
 4. *In an Action against husband and wife, if the wife only be arrested, the Court will discharge her upon common bail; but if the husband be arrested, he shall put in bail for himself and his wife*, 245.
 5. *If a feme covert be the only Defendant, the Court will not, in all cases, discharge her upon common bail*, 245.
- See WRITS, 19. AC ETIAM, 2. ATTACHMENT of CONTEMPT, 1, 2. 4.

ATTACHMENT of CONTEMPT.

1. That a prisoner, taken upon a *Capias* in Process, be not discharged until he give bond to appear, unless the Plaintiff or his Attorney consent to take an appearance without bail; in which case, the Warrant of Attorney not to be revoked, and the Bailiff offending, and Attorney refusing to appear, subject to Attachment, 53. 63.
2. *All securities given to Sheriffs and their Officers for the appearance of any Defendant under arrest, except*

I N D E X.

- cept Bail Bonds taken in the name of their office of Sheriff, are void by Stat. 23 H. 6. c. 10. 54.*
3. *Which Bonds are, by Stat. 4 and 5 Annæ, c. 16, assignable to the Plaintiff, 55.*
 4. *But undertakings given to a Plaintiff are not within the Statute, and the Court will enforce the performance, and grant an Attachment, if bail be not put in accordingly, 54.*
 5. *At what period motions, &c. in matters of Attachment become proceedings upon the crown-side of the Court, and how Affidavits, &c. are to be entitled, 209.*
 6. *Attachments can be moved for only in the two following cases, upon the last day of Term; viz. for non-payment of costs, and against a Sheriff for not returning a writ, 273.*
 7. *What are the several requisites for obtaining a regular Attachment for a Contempt in not obeying a Rule of Court, 273.*
 8. *That all Interrogatories, exhibited by Rule of Court to persons against whom Attachments have issued, be signed by Counsel. See ADDENDA.*
 9. *That the names of all causes, in which the Court have ordered Attachments to issue in order to compel persons to answer Interrogatories, be inserted in the peremptory paper of the ensuing Term, 325.*
- See SHERIFFS, 10. 13.*

ATTACHMENT of PRIVILEGE,

1. *That upon suing forth every Attachment of Privilege, a Præcipe be left with the Signer of the Writs, and entered upon the Roll of Writs, which shall not have more than four Defendants in each, 269.*

I N D E X.

2. *Attachments of Privilege need not have the Attorney's name issuing them subscribed, such writs not being within the meaning of the Stat. 2 G. 2. c. 23.* 219.

ATTORNIES.

1. That all Attornies, and all Sheriffs of England or their deputies, personally attend the Court, 22.
35-79. 93.
2. General Rule for the regulation of the conduct of Officers of the Court, Attornies, &c. 34 to 48, 190 to 197.
3. *The several privileges and disabilities of Attornies, and of actions brought by and against them,* 38 to 43.
4. That no person change his Attorney without Rule of Court or Judge's Order, and the new Attorney to take notice, at his peril, of the Rules to which the former was liable, 63.
5. *This Rule is still the practice both of this Court and the Common Pleas,* 64.
6. That the retainer of an Attorney of one Court by an Attorney of another be sufficient, *ibid.*
7. That Attornies resident in or within ten miles of London or Westminster, enter their names and places of abode in the Master's Book, which if they omit, what shall be deemed good service of such Rules, Notices, &c. as do not require personal service, 303.
8. What notice shall be given by persons intending to apply to be admitted Attornies, previous to such application, 315. 323.

See VENUE, of PRACTICE, 2. BAIL, SPECIAL, 9.

FEE, 1.

AUDITA

AUDITA QUERELA.

That no Writ of *Audita Querela* be allowed, or bail taken thereupon, but in open Court on motion, 70.

See PROCEEDINGS against BAIL, 14.

B.

BAIL, COMMON.

1. That Attornies, &c. deliver to the Secondary after every Term a note of all appearances entered by them of the preceding Term, 86.
2. Within what time after appearance the Defendant shall file Common Bail, 117.
3. That upon every Judgment, acknowledged by Warrant of Attorney, Bail shall be filed, 142.
4. Although a Defendant appear voluntarily, yet must the Plaintiff sue out a writ, 145.
5. That the Secondary be duly paid for filing Common Bail, 147.
6. If a Plaintiff file Common Bail for his Defendant, he shall write on the ball-piece, "Filed according to the Statute," 255.
7. A Plaintiff cannot file Common Bail for his Defendant after the end of the next Term following that wherein the writ was returnable; and if he wait until he become entitled to file Common Bail, before he declare, he must bring the Defendant into Court and declare in chief, 255.
8. The ancient and present practice of appearing and putting in Special and Common Bail, and the times allowed for those purposes, 280.

I N D E X.

9. That the Clerk of the Bails mark the bail-pieces numerically, as received by him, 308.

See PLEAS, PLEADING, 8.

BAIL, SPECIAL; *Exception thereto, and Justification of Bail.*

1. That no Attorney put in bail for any Defendant, before he give notice thereof to the Plaintiff's Attorney, 7.

2. *This Rule is obsolete, no notice being now given until the Bail are acknowledged, ibid.*

3. On notice of putting in Special Bail, the Plaintiff's Attorney to attend the Judge, to except or take exception to the Bail offered, 21.

4. *How this Rule, which is now obsolete, might be usefully put in practice, 22.*

5. Attornies putting in Special Bail immediately to file the bail-piece, 24.

6. Special Bails to be filed of the Term they be taken, 27.

7. *If Bail be added of a Term subsequent to that wherein the first Bail were acknowledged, the Recognizance shall be a Record of the Term wherein they were added, ibid.*

8. That the bail-pieces be filed within twenty days after the Bail be accepted, 92.

9. That no Attorney be lessee in Ejectment or Bail, 40. 261.

10. That no Sheriff's Officer, Bailiff, or other person concerned in the execution of process, be Bail, 262.

11. *Several determinations upon the above Rules, as to Attornies, &c. becoming Bail, 43.*

12. What

I N D E X.

12. What Bail shall be accepted in Covenant, Battery, Slander, and in actions at the suit of privileged persons, 62.
13. The several Rules limiting the times for putting in Special Bail, and giving notice thereof, &c. 117. 177. 207.
14. That no Defendant be compelled to put in Bail for a greater sum than is expressed in the Process, and that if any Plaintiff declare for a greater sum, the Bail not chargeable, 124.
15. How Bail acknowledged before Commissioners shall be taken, and the duties of such Commissioners, 166.
16. *The Judges of the several Courts at Westminster are impowered by Statute to appoint Commissioners for taking recognizances of Bail and affidavits of justification, at a limited distance from London, 170.*
17. *If the same persons who became Bail to the Sheriff become Bail above, in what manner the Plaintiff must proceed to enforce a justification, 208.*
18. *If the Plaintiff obtain an Attachment against the Sheriff, or take an assignment of the bail-bond for want of Bail above, or a justification, upon what terms the Court will let the Defendant in to try his cause, 208.*
19. That no exception to Bail be made after twenty days notice thereof given, 209. 282.
20. That exception to Bail in suits by Original Writ be entered in the Filacer's Book, and notice thereof given as in actions by Bill, 226.
21. *If an action by Original be commenced in one County, and the Plaintiff declare in another, the Bail are discharged, unless the Plaintiff sue by Testatum Capias, 226.*

INDEX

22. Within what time Bail must justify after exception, and notice thereof given, 244.
 23. If the same persons who became Bail above are the Bail to justify, one day's notice of justification is sufficient, 245.
 24. That Bail be liable only for the sum indorsed on the writ, or less, if less be recovered, 246.
 25. For what sums Bail to the Sheriff, Bail upon their recognizance, and the Sheriff himself, if fixed, are respectively liable, 186. 246.
 26. The several times allowed, according to the present practice, for putting in and justifying Bail, whether the suit be by Original Writ, or by Bill, 280.
- See ARREST, 1, 2, 3, 4, 5.

PROCEEDING against BAIL, and of Bail surrendering their Principals

1. If Bail be sued upon their recognizance, they shall have eight entire days in full Term to surrender their Principal, 183.
2. The case from whence this Rule originated, 184.
3. The difference in practice of proceeding by Scire Facias and Action of Debt upon the Recognizance of Bail, 184.
4. The Court never permit a Scire Facias against Bail to be amended, and if any irregularity happen, how the Plaintiff must proceed, *ibid*.
5. If a Defendant become bankrupt, and obtain his certificate, how the Bail must proceed, to be discharged of their recognizance, 185.
6. In such case, Bail in Error become fixed, although their Principal be discharged, 185.

I N D E X.

7. If a Defendant become a Peer pending the suit, the Court will discharge the Bail, 186.
8. Though the Defendant confess the action by Cognovit without notice, yet the Bail remain liable, *ibid.*
9. If Bail be summoned at so late an hour upon the return-day of the Scire Facias that it be impossible to surrender the Defendant within the return, the Court will set aside the proceedings thereupon, *ibid.*
10. If a Writ of Error be brought upon the Judgment, upon what terms the Court will stay proceedings against the Bail, and within what time application must be made, 187.
11. If a Writ of Error be allowed before the return of the Ca. Sa. the Plaintiff cannot proceed thereupon against the Bail, *ibid.*
12. If a Defendant die after Scire Facias sued out, the Bail become fixed, 187. 251.
13. If the Defendant neglect to give notice of his surrender, and the Plaintiff obtain judgment by Scire Facias against the Bail, the Court will not relieve them upon motion, they must proceed by Audita Querela, 187.
14. Upon the surrender of a Defendant in discharge of his Bail, a Reddidit se to be left with the Secondary, 188.
15. When a Defendant is surrendered, what steps are necessary to be taken to exonerate his Bail, 189.
16. Writs of Scire Facias, of which notice shall be given, to be left in the Sheriff's Office four days before the return, exclusive of the return-day; and every Scire Facias, on which a Nihil shall be returned, shall be left some time before the return; and every Alias four days exclusive before the re-

I N D E X.

- turn; and Sheriffs to indorse when such writs were received, 247.
17. *The practice of proceeding by Scire Facias against Bail, and several cases determined in respect of such practices*, 248, 249, 250, 251.
18. That Bail above have liberty to render a Defendant without justifying, although the Sheriff be called upon by Rule to bring in the body, 322.
- See WRITS, 18.

BAIL upon HABEAS CORPUS.

1. That no Bail be put in on any *Habeas Corpus* until the writ be returned, 31.
2. Prisoners returned upon *Habeas Corpus* not to be discharged until Bail be perfected, 58.
3. Upon the removal of a Defendant by *Habeas Corpus* from any inferior Court within five miles of London, what notice of Bail shall be given, and how served, 59.
4. If no Bail within eight days after allowance of such *Habeas Corpus*, a *Procedendo* to issue, 60.
5. If Bail be put in, and no exception within twenty days, the bail-piece to be filed within four days after the twenty, 60. 118.
6. How the Plaintiff shall proceed to speed the Defendant in putting in Bail, 61.
7. That in all causes removed from inferior Courts, Special Bail ought to be given, 61.
8. Special Bail put in upon a *Habeas Corpus* may be excepted to within twenty-eight days, which if not done, the bail-piece to be filed, 118.
9. That no Bail be put in on any *Habeas Corpus* before the writ be returned, and the Attorney putting in
in

I N D E X.

- in Bail, to pay the Judge's Clerk for filing the bail-piece, who shall account with the Secondary, 127-174.
10. That every Defendant, not being an executor or administrator, removing a suit from an inferior Court, put in Special Bail in all actions, except for scandalous words, small assaults, or unless a Judge otherwise order, 138.
 11. *What actions may and may not be removed from inferior Courts, and what Bail is now by Statute requisite thereupon, 139.*
 12. How Bail shall be acknowledged and the bail-piece filled up in causes removed by *Habeas Corpus*, 168.
 13. *When a cause is removed from an inferior Court, how the Plaintiff must proceed, 174.*
 14. *The Rules which permit a Plaintiff to declare de bene esse, do not apply to causes removed from inferior Courts, 175.*

BAIL in ERROR.

1. That every Attorney suing forth a Writ of Error returnable in the Exchequer Chamber, allow such Writ within four days, and put in bail thereupon (if Bail ought to be put in) within four days after allowance, 115.
2. That such Writs of Error be delivered to the Clerk of the Errors without delay, until which delivery none shall be bound to forbear suing forth execution, nor unless Bail be put in within four days, 134.
3. Notice of Bail in Error to be given, which, if not excepted to in twenty days, shall be allowed, 155.
4. *The several cases in which Bail, and what Bail in Error is necessary, 156.*

5. *If*

INDEX

5. If judgment be against an executor or administrator de bonis propriis, and he bring Error, he must put in Bail in all cases in which Bail in Error is required, aliter if the judgment be de bonis testatoris, 157.
6. The Court will not set aside an execution issued before, but executed after a Writ of Error allowed, if the Plaintiff in Error do not follow up his writ, by duly putting in Bail, 159.

See ERROR.

BARON and FEME.

See ARREST, 4, 5.

C.

CONCILIIUM.

See ARGUMENT, 1, 2, 3, 4, 5, 6.

COSTS.

If a Plaintiff sue by Original Writ, and recover a less sum than 50*l.* he shall be allowed no more Costs than if he had proceeded by Bill, unless the action be such as could not be brought by Bill, or the Defendant be actually outlawed, 288.

COURT.

Rule to prevent disturbance of the Court, 140.

D.

DECLARATION.

1. Repetition of the Original Writ, and unnecessary length in Declarations, to be avoided, 66, 67, 68.

2. That

I N D E X

2. That no Clerk, Filacer, or Attorney deliver a Declaration to any person except Clerks, Filacers, or Attornies, 87.
3. The Plaintiff's Attorney to deliver a copy of his Declaration to the Defendant's Attorney, who shall pay for the same, which if he omit, or if his place of abode be unknown, it shall be filed, and notice thereof given, 186. 219.
4. What shall be paid by the Defendant's to the Plaintiff's Attorney upon his delivering a Declaration, 147.
5. If the Plaintiff enter an appearance, or file common bail for the Defendant, he must file his Declaration, and give notice thereof, and when such Defendants shall plead, 216.
6. *In this Court, in all cases wherein a Declaration be filed, it is necessary to give the Defendant notice thereof; but in the Common Pleas, if the action require Special Bail, and the Plaintiff declare de bene esse, no notice is necessary, 221.*
7. Copies of Declarations to be paid for by the Defendant's Attorney, before he be permitted to plead, 258.
8. Of declaring *de bene esse*, and when Defendants shall plead, 256. 276.
9. *Every Declaration must be intitled of the Term wherein the writ was returnable, though not delivered until the following Term, or afterwards, 287.*
10. *The Rules which permit Declarations to be delivered de bene esse, do not apply to causes removed from inferior Courts, 175.*

See NON PROSS, 1, 2, 3. PRISONER, 9, 10, 12, 13, 15.

18. 23. AMENDMENT, 1. IMPARLANCE, 1, 2, 3, 4, 5.

BAIL

INDEX.

BAIL *or* HABEAS CORPUS, 14. BAIL, COMMON, 7.

DECLARING *by the Bye.*

1. If a Plaintiff file Common Bail for a Defendant, no other person shall declare by the Bye against such Defendant, by reason of such Common Bail, 254.
2. *When a Defendant have appeared by either Common or Special Bail, any person may deliver a Declaration against him by the Bye, at any time within two Terms, but not afterwards; but if Bail be filed according to the Stat. the Plaintiff in the writ can alone deliver a Declaration by the Bye, and Special Bail shall amount only to Common Bail, in respect of Plaintiff's declaring by the Bye, 287.*
3. If a Defendant plead in Abatement, and the Plaintiff enter a Judgment of Cassetur, he may, at any time during the same Term, deliver a Declaration by the Bye, *ibid.*

DEMURRER.

1. Causes of Demurrer to be specially assigned, 73, 74.
2. By Stat. 4 and 5 Annæ causes of Demurrer must be specially assigned, 74.

See ARGUMENT, 1, 2, 4, 5. NOTICE of TRIAL, &c. 6, 7.

DOCKET.

See JUDGMENT, 1, 2.

EJECT.

INDEX.

E.

EJECTMENT.

1. After a Rule to plead in Ejectment, Judgment may be signed as in other actions, 25.
2. How the *Capiatur* shall be entered in Judgments by default in Ejectment, 78.
3. That a writ be sued out and Common Bail filed in all actions of Ejectment, 94. 133.
4. *It is now unnecessary to sue out a writ in actions of Ejectment*, 94.
5. The Defendant in Ejectment to give notice of the Tenements he means to defend, 105.
6. *How the notice required by this Rule is usually given*, *ibid.*
7. That a Rule to plead in Ejectment be entered before motion for Judgment against the casual Ejector, 121.
8. *If Error be brought upon a Judgment in Ejectment, what Bail the Plaintiff in Error shall put in*, 157.
9. That the Clerk of the Rules keep a book containing entries of all Rules delivered out in Ejectment, how such entries shall be made, and when the Rules shall be drawn up, 309.
10. *The several cases wherein Landlords may be made Defendants, under the Stat. 11 G. 2. c. 19.* 310.
11. *The practice, if the Landlord alone be made Defendant*, 311.
12. *If the Plaintiff obtain Judgment in Ejectment, and a Writ of Error be brought, the Court will not permit Execution to issue until the proceedings in Error be determined*, *ibid.*
13. *In*

I N D E X

13. In all actions, real and mixed, the several Rules calling upon the adverse party to speed the suit, must be obtained by motion in Court, unless the Defendant plead in Abatement, and why that case be an exception, 311.

See SPECIAL BAIL, 9.

ENTRIES.

1. The several Rules directing the times when, and persons by whom, entries shall be made, and the Rolls carried in, 69. 83. 136.
 2. That deeds be inrolled upon the Rolls of the Chief Clerk, and how they shall be acknowledged, 178.
 3. The occasion of making this Rule, and the present practice of inrolling Deeds, 179.
 4. Warrants of Attorney to be entered upon the Roll and duly filed, 140. 203.
 5. Should a clerical error occur in the Entry of Warrants of Attorney, the Court will permit an amendment, though the action be upon a penal Statute, 204.
 6. That an Indictur be entered on the Roll before Judgment be signed or the record of *Nisi Prius* sealed; a minute thereof entered in a book to be kept by the Secondary, and when Attornies shall carry in their Rolls, 200.
 7. The fees payable to the Chief Clerk for Entries, 201.
- See ROLLS.

ESCAPE.

See PRISONERS, 5, 6, 7, 8. 32.

ERROR. *Writ of.*

1. If a Defendant bring Error, and the Plaintiff sue upon the Judgment and recover, he cannot have execution

I N D E X

cution of the second Judgment, until the Writ of Error be determined, 158.

2. If a Plaintiff lodge a Ca. Sa. with the Sheriff, in order to proceed against the Bail, and a Writ of Error be allowed before the return, it is not sufficient to fix the Bail, though the Sheriff afterwards return the Ca. Sa. 159.
3. The terms whereon the Court stay proceedings in an action upon a Judgment pending a Writ of Error, *ibid.*
4. If it manifestly appear the Writ of Error be brought merely for delay, the Court will not stay execution, 160.
5. If a Defendant in Error become bankrupt, in what stage of the suit his assignees may make themselves parties to the action, *ibid.*

See BAIL in ERROR. OFFICERS of the COURT, 2.
WRITS, 1.

F.

F E E S.

1. That no Attorney of this Court pay a greater sum on entering his Record for trial at the Assizes than Attornies of the Common Pleas, 8.
 2. Fees payable to the Clerk of the Bills and Declarations, 109. 122.
- See ENTRIES, 7. MONEY paid into COURT, 1, 2.
PRISONERS, 1, 2.

F I N E S.

See ORIGINAL WRIT, 6, 7.

H A B E A S

I N D E X.

H.

HABEAS CORPUS.

1. *Habeas Corpus* not to be returnable immediately, but upon a day certain in Court, unless directed to the Sheriffs of *London* or *Middlesex*, or be to deliver over a prisoner in discharge of his Bail, 55.
2. *Habeas Corpus* to the Sheriffs of *London* or *Middlesex* may be granted in Term or Vacation, and made returnable immediately, 56.
3. Sheriffs, &c. to make return of Writs of *Habeas Corpus* returnable immediately the day the writ be delivered, and bring the body, without permitting the prisoner to wander abroad, *ibid.*
4. *Habeas Corpus ad respondendum* to be good cause of Detainer, 57.
5. So also a *Habeas Corpus ad satisfaciendum*, and how such writs shall be indorsed, *ibid.*
6. Prisoners charged with process of other Courts, if brought up by *Habeas Corpus*, may be committed, with the causes, 58.
7. Writs of *Habeas Corpus* directed to inferior Courts, within five miles of *London*, may be returnable immediately, 59.
8. When a *Procedendo* may issue, 60.
9. Where the *Venue* shall be laid in actions removed by *Habeas Corpus* from the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, and *Poole*, 61.
10. Upon causes removed by *Habeas Corpus* from inferior Courts, if the Plaintiff obtain Judgment, the costs below to be allowed in the Judgment, if the Defendant, the costs of putting in Bail, 77.

11. Prisoners

I N D E X.

11. Prisoners committed to the custody of the Marshal upon Writs of *Habeas Corpus*, to remain in custody two days, although another *Habeas Corpus* be delivered, 149.

See BAIL upon HABEAS CORPUS. VENUE, 5.

HUSBAND and WIFE.

See ARREST, 4, 5.

I.

IMPARLANCE.

1. When Imparlanes shall be entered, 69.
2. In what cases a Defendant shall have an Imparlance, 71, 72. 222.
3. That no special Imparlance be entered without leave of the Court, 199.
4. If a Defendant be entitled to an Imparlance, and plead to the jurisdiction or in abatement, how he ought so to plead, 199.
5. If the writ be returnable of one Term, and the Bail be not perfected until the Term following, the Plaintiff may declare in the latter Term, and the Defendant is not entitled to an Imparlance, 287.

INFORMATIONS, in the Nature of *quo Warrantos*.

The time of limitation for Informations in the nature of *quo Warrantos*, 312.

INTERROGATORIES.

See ATTACHMENT of CONTEMPT, 8, 9.

INDEX.

ISSUES.

1. Issues to be entered before the Record of *Nisi Prius* be sealed, and when to be filed, 87.
 2. That Issues joined of a preceding Term, be tried within the first week of the following Term, after which, the Record of *Nisi Prius* not to be sealed, without leave of the Chief Justice; and, unless all causes in *London* and *Middlesex* be entered two days before the day of sitting, a *Ne Recipiatur* may be entered, 112. 124.
 3. If the Issue be not paid for on delivery, the Plaintiff may sign Judgment, 180.
- See PLEAS, PLEADING, 3.

JUDGMENT.

1. That all Judgments for sums amounting to 20 *l.* be regularly docketted, 10.
2. Judgments are, by Stat. directed to be docketted alphabetically, and the operation of the Stat. upon such Judgments as are omitted to be docketted, 11.
3. Officers signing Judgments to enter the date of signing the same, *ibid.*
4. That Bail be filed for the Defendant on entering Judgment by Warrant of Attorney, 142.
5. That there be no distinction as to the time of signing Judgment, between town and country causes, and when the Plaintiff may sign Judgment, 225.
6. Though a Judgment be strictly regular, yet if the Defendant swear to merits, the Court will, upon an early application, and upon certain conditions, let him in to try the cause; and though the Judgment be irregular, the Defendant ought to apply

I N D E X.

to set it aside, as soon as he know of the irregularity,
225.

See PLEAS, PLEADING, 5. ISSUE, 3.

JURY.

1. Sheriffs to give sufficient summons to Jurymen, 28.
2. *How Jurymen are directed to be nominated and returned to the Sheriff, and what notice he shall give to such as be returned to serve at the Assizes, ibid.*
3. Allowance to Jurors summoned upon Trials at Bar, 75.
4. How a Jury for the trial of an Issue at Bar shall be nominated and reduced, 165.
5. *The party applying for a Special Jury shall pay the expence thereof, unless the Judge certify the cause proper to be tried by a Special Jury, 166:*

M.

MARSHALSEA COURT.

1. That records of the Court of the Marshal of the Household, returned upon Writs of Error, be altered in the stile of the Court, 15.
2. *The Court of the Marshal of the Household is subordinate, and subject to the Court of King's Bench, 16.*

MASTER'S APPOINTMENT.

1. That every Attorney attend the Master's Appointment on matters in reference before him, 96.
2. That the first Appointment of the Master be attended, in default whereof, he may proceed *ex parte*, 319.

See MONEY paid into COURT, 3.

I N D E X.

MONEY paid into COURT.

1. Fees payable to the Secondary on bringing money into Court, 4.
 2. *Such fees are alike, whether the money be brought in under the common Rule, or upon a Plea of Tender, 5.*
 3. *If money be paid into Court, under the common Rule for leave so to do, and the Plaintiff accept thereof in full, it is his duty to get the Master's appointment to tax upon an office-copy of the Rule, 5.*
- See MASTER'S APPOINTMENT, 2.

N.

NE RECIPIATUR.

1. If a *Ne Recipiatur* be entered, the Plaintiff may try his cause at the next sitting, giving fresh notice during the first sitting, 197.
 2. *The occasion of making this Rule, 198.*
- See ISSUE, 2.

NON PROSS.

1. If a Plaintiff do not declare within the second Term, the Defendant may sign a *Non Pross* in the vacation of such second Term, but not afterwards, 70. 72.
2. *If a Defendant omit to sign his Judgment of Non Pross, in pursuance of the above Rule, the Plaintiff may declare at any time within twelve months from the return of the writ, 70.*
3. Upon writs returnable at certain periods of the Term, if Rules to declare be given, and the
Plaintiffs

I N D E X.

Plaintiffs do not declare accordingly, when *Non Profs* may be signed, 72.

NOTICE.

What is and is not good service of Notice in general, and wherein written Notice is and is not necessary, 273.

See NOTICE of TRIAL, INQUIRY, and COUNTER-MAND.

O.

OFFICERS of the COURT.

1. That Filacers, and other Officers of the Court, duly attend the same, 18. 36.
 2. If the Clerk of the Errors neglect his duty, the Clerk of the Treasury may perform his office, 20.
 3. That a Clerk attend the Treasury, that access may be had to the Rolls, 82.
 4. That the Keeper of the Seals allow to every Clerk of the Chief Clerk and his Clerk, the sealing of one writ *gratis* every Term. See ADDENDA.
- See ACCOUNT, 1. 2.

ORIGINAL WRITS.

1. That no Attorney, &c. deliver or receive any Declaration by Original Writ, varying from the writ, or deliver or receive more than one Declaration on any one writ, 14.
2. That the Master inquire what writs belong to the Filacer to sign, 129.
3. That writs which ought to be signed by the Filacer, be so signed before they be sealed, and that the Master inquire of such writs, 129.

I N D E X.

4. *The occasion of making the latter two Rules, 130.*
 5. That all writs and process upon Original Writs before appearance, be signed by the Filacer, *ibid.*
 6. That fines payable to the Crown, upon suits commenced by Original Writ, be collected as theretofore, 162.
 7. *The several fines payable upon suing by Original Writ, and the difference in the practice of this Court and the Common Pleas, as to the payment of such fines, 164.*
- See DECLARATION, 1. OYER, 1, 2. VENUE, 6. COSTS, 1.

O Y E R.

1. Defendants are not entitled to Oyer of the Original Writ, and if demanded, the Plaintiff is not bound to take notice thereof, but may proceed, 275.
2. *The occasion of this resolution of the Court, ibid.*
3. *Wherever a party is bound to make a proferat, the other party is entitled to Oyer, 276.*
4. *If either party crave Oyer, and in his subsequent pleading do not fully set forth the same, the plea is a nullity, and Judgment may be signed; or the Court will quash it, and under certain circumstances censure the Attorney, 277.*
5. *The times within which Oyer must be demanded, and when given, what time the party demanding Oyer has afterwards to plead, 277.*
6. *If a Judgment or matter of record of the same Court be pleaded, the party pleading must, on demand, give a note in writing of the Term and number of the Roll, whereon such Judgment or Record is entered, in default of which, the plea is not to be received, 278.*

7. *Where*

I N D E X.

7. *Where the Bond, &c. be in the hands of a third person, the Court on motion will compel him to give Oyer, 278.*
8. *How Oyer must be given, and how paid for, ibid.*

P.

PAPER BOOKS.

1. The several Rules directing the times when, by whom, and how Paper Books shall be delivered to the Judges, in matters of Error, Demurrer, Special Verdict, &c. 19. 84. 120. 132. 137.
 2. *The present practice as to the time of delivering Paper Books to the Judges, 138.*
- See PLEAS, PLEADING, 3, 4. ARGUMENT, 1, 2, 4, 5, 6.

PAUPER.

1. That none be admitted *in forma pauperis* out of Court, 139.
2. *What is now the practice of obtaining leave to sue and defend in forma pauperis, ibid.*

PLEAS, PLEADING.

1. That Pleas which ought to be filed with the Clerk of the Papers be duly filed accordingly, and not delivered over by one Attorney to another, and that all such Pleas be signed by Counsel; that copies thereof be made by the Clerk of the Papers, and the Counsel's name subscribed to such copies, 1. 116. 120. 143.
2. That Pleadings be succinct, and how unnecessary length in certain Pleadings to be avoided, 72, 73.

I N D E X.

3. *What Pleas ought to be filed with the Clerk of the Papers, and upon what the Plaintiff's Attorney may himself make up the Issue or Demurrer Book, 144. 145.*
 4. *In what cases the Plaintiff may make up the Paper Book, without giving a Rule to rejoin, &c. 146.*
 5. *If the Paper Book be not returned and paid for, or the Defendant do not demur or plead the General Issue, what Judgment shall be entered, ibid.*
 6. *If a Defendant plead to the jurisdiction of the Court, or in abatement, of a different Term to that whereof the Declaration is intituled, how he ought so to plead, and the times allowed for filing such Pleas, 199.*
 7. *A Defendant may dispense with the Rule to plead, and plead gratis, in which case, if his Plea be a nullity, the Plaintiff may sign Judgment, without giving any Rule, 199.*
 8. *If the Plaintiff enter an Appearance, or file Common Bail for any Defendant, according to the statute, such Defendant shall be allowed only four days time to plead, 216.*
 9. *The several Rules directory of the time for the Defendant's pleading, 205. 249. 256. 276.*
 10. *If the party called upon by Rule to speed the proceedings of an action, as to plead, reply, &c. do not perform what is required within the time given by the Rule, the adverse party is not bound to accept a performance afterwards, but may sign Judgment, 219.*
 11. *If a defendant plead a dilatory plea, the Court on motion will order that he stand by his plea, or plead such other peremptorily on the morrow as he will stand by, after which, he can only plead the General Issue, but may give notice of set-off, 278.*
- See PRISONER, 21. 26.

POSTEAS.

INDEX.

POSTEAS.

1. That *Posteas*, after being returned by the Clerk of Affize, be duly marked by the Clerk of the *Posteas*, 2.
2. That no *Postea* be delivered to any, except the Prothonotaries, their Clerks and Filacers, 84.

PRACTICE.

1. If the Court make a Rule, in presence of Counsel, for both parties, it shall not be again moved, contrary thereto, 3.
2. That every Attorney personally appear in Court within certain days of every Term; that they enter their pleadings within three days after every Term; that no Rule be made by any Judge after that time; that no Attorney apply for that purpose; and that Rules made after that time be void, 95.
3. That Rules enlarged to a subsequent Term be moved before the last week of such Term, 272.
4. *Where Rules stand over from one Term to another, they are now entered in the peremptory paper, and come on in rotation upon the days appointed, ibid.*
5. That no Judge's Summons be returnable during the sitting of the Court, 215.
6. Resolution of the Court as to the Practice of reading Affidavits, and hearing Counsel for and against prisoners, brought up for sentence upon any Indictment or Information after Verdict, 301.

PRI.

PRISONERS.

1. That Prisoners removed from the Fleet to the King's Bench remain in custody there until the fees of the Fleet be paid, 17.
2. *If a Defendant bring a Habeas Corpus to remove himself from any prison to the King's Bench, the Judge will not commit him until he pay the Gaoler his fees, 18.*
3. When Prisoners shall become supersedeable for want of declaring against them, 65.
4. That before any Prisoner be discharged out of custody for want of prosecution, his Attorney serve the Plaintiff or his Attorney with a Summons to shew cause to the contrary, 113.
5. That the Marshal of the King's Bench suffer no Prisoner to go out of the Rules of that prison without a Rule of Court, 126.
6. *This Rule is enforced by Stat. 8 and 9 W. 3. c. 27. and he is thereby enabled to retake a Prisoner escaping upon fresh pursuit, but must plead the recaption specially to an action for an escape, and verify his plea by Affidavit, ibid.*
7. *If the Keeper of any Prison refuse, after one day's notice, to shew any Prisoner in execution to his Creditor or Attorney, it shall be deemed an escape, 127.*
8. *If a Prisoner, having the Rules of the King's Bench Prison, escape without the Marshal's knowledge, such escape is negligent, not voluntary, and a recaption may be pleaded, ibid.*
9. That no Declaration against a Prisoner be delivered before the return of the writ, 151.

I N D E X .

10. Nor any Rule to plead given till Affidavit made and filed of the delivery of the Declaration, a copy whereof shall be produced on signing Judgment, 152.
11. When Judgment may be signed, *ibid.*
12. When Prisoner superseable for want of Declaration, 154.
13. Gaolers forthwith to deliver Declarations received by them to their Prisoners, *ibid.*
14. That Prisoners in custody of the Marshal be charged in execution before the end of the second Term after Judgment, if no Writ of Error be pending, 172.
15. Within what time the Plaintiff shall declare against a Prisoner, who having escaped from the custody of the Marshal, shall be taken upon an Escape Warrant, 206.
16. When Prisoners shall become superseable for want of prosecution, 210.
17. Rule for the better government of the King's Bench Prison, and ascertaining the fees thereof, 227.
18. That no Declaration be sufficient to charge any Prisoner in custody of the Marshal, unless an Affidavit of the cause of action be first made and filed with the Clerk of the Rules, who shall indorse the same, 267.
19. General Rule, declaring when Prisoners shall become superseable for want of proceeding in the several stages of a suit, 289.
20. *A numerical list of the several cases wherein a Prisoner shall become superseable, 294.*
21. *When a Prisoner must give notice of having pleaded, 297.*

22. The

I N D E X.

22. *The difference in the practice of proceeding against Prisoners, by reason of the Stat. 4 and 5 W. and M. c. 21. 297, 298.*
23. *Declarations against Prisoners must be delivered to them personally, or to the Gaoler, 298.*
24. *As the delivery of Declarations against Prisoners to the Gaoler, so is the delivery and service of every other proceeding and notice, ibid.*
25. *If the same Plaintiff, or other persons have several causes of action against a Prisoner in custody of any Sheriff, &c. how they must commence their suits, ibid.*
26. *If the Defendant be in custody of the Marshal, a demand of a plea is necessary, aliter if in any other custody, ibid.*
27. *Explanation of the Rule that a Prisoner once supersedeable, always remains so, 299.*
28. *If a Prisoner in custody of the Marshal be removed by Habeas Corpus, and committed to the Fleet before Declaration, the Plaintiff may proceed against him in either Court, and how, ibid.*
29. *Any person resident within the walls of the King's Bench or Fleet, although not a Prisoner, may be detained as if in actual custody, ibid.*
30. *Cautions necessary to be attended to in proceedings against Prisoners, 300.*
31. *If a Defendant, a Prisoner, be superseded for any other cause than the not charging him in execution, the Plaintiff, having proceeded to judgment, may take him in execution, but not if he have been superseded for want of being charged in execution, nor can he, in such case, be held to bail in an action upon the Judgment, ibid.*

32. *If*

I N D E X.

32. *If the Marshal of the King's Bench, or Warden of the Fleet, suffer a Prisoner to go at large out of the Rules, unless upon a Habeas Corpus or Rule of Court, it is an escape; and by Stat. 8 and 9 W. 3. c. 27. the profits of the prison may be sequestered towards payment of the debt of the Prisoner, and how the Plaintiff must proceed for that purpose, 300, 301.*
33. Rule for limiting the boundaries of the Rules of the King's Bench Prison, 305.
34. That no Prisoner in the King's Bench Prison have more than three day Rules each Term, and return within the walls and Rules before nine o'clock in the evening of the day for which such Rules be granted, 307.
35. *The King's Bench Prison, the Prisoners therein, and the Officers thereof are wholly subject to the controul of the Court, ibid.*

P R I V I L E G E.

See ATTORNEY, 3. VENUE, 1.

P R O C E D E N D O.

See BAIL on HABEAS CORPUS, 4. 6. 13.

R.

R E C O R D of NISI PRIUS.

1. Within what times Records of *Nisi Prius* for the trial of Issues at the Assizes shall be sealed, 106. 131.
2. *The practice now is, to seal the Record at any time when presented; but if the time limited by the Rules have*

I N D E X.

have expired, two shillings are paid for a Judge's order for leave so to do, 131.

3. Records of *Nisi Prius* in *London* and *Middlesex* to be sealed upon or before the day appointed for their trial, 212.

4. That no Record of *Nisi Prius* be sealed before the Issue, or a part thereof, be entered upon the Roll, 202.

See ISSUES, 2.

RETURN of WRITS.

Vide SHERIFF.

ROLLS.

1. That Rolls be delivered to the Prothonotaries Clerks alone; that Rolls be not carried into the country; and upon what Rolls, Deeds, &c. shall be entered, 69. 136.

2. When Rolls shall be brought in and filed, 150. 173. 175. 203.

3. On what Rolls and how Deeds shall be acknowledged and inrolled, 136. 178.

4. *The occasion of making the Rule, (page 178,) and how Deeds may be acknowledged and inrolled, 179.*

5. That no Plea Roll be filed after the end of the Term following that where it ought to have been filed, without leave of the Court, 171.

6. That no Rolls be received or allowed for by the Clerk of the Treasury, unless marked by the Stationer appointed by the Lord Chief Justice, 259.

See OFFICERS of the COURT, 3.

RULE

INDEX.

RULE of COURT.

See PRACTICE, 1. 3, 4. PRISONER, 5.

S.

SCIRE FACIAS.

See PROCEEDINGS against BAIL, 3, 4. 9. 12, 13. 16,
17. WRITS, 18.

SHERIFFS, UNDERSHERIFFS, &c.

1. Sheriffs to make return of all Writs of *Latitat*, and writs thereupon issuing, before or immediately after the end of every Term, and make oath that the writs so returned were all the writs directed and delivered to them, 6.
2. That the Sheriff of *Chester* return all writs to him directed, 21.
3. That all Sheriffs, or their deputies, duly attend the Court to return and receive writs, and *that every deputy have his name and place of residence in London or Westminster, set up on tables in the office of the Prothonotary*, 22. 36. 104.
4. By Statute, *Sheriffs are directed to appoint deputies to attend the several Courts of Westminster, and a penalty is imposed for neglect*, 36.
5. Undersheriffs and Bailiffs, during their employment as such, not to practice as Attornies, 39.
6. Sheriffs, and others having the execution of writs, diligently to execute the same, and not take undue fees, 43. 45.
7. That no Warrant be granted by any Sheriff before he receive the writ, 44. 104

8. *This*

I N D E X.

8. *This Rule is enforced by Stat. 6 Geo. 1. c. 21. which also directs that every Warrant have the day and year whereon it be issued set down thereon, 44. 104.*
 9. Sheriffs to make and enter of record sufficient deputies in pursuance of the Stat. 23 H. 6. c. 8. who shall attend the Court, and not make or deliver any Warrants before they receive the writ or deliver any Blank Warrants, 103, 104.
 10. That Sheriffs return writs and bring Defendants into Court, if served with Rules calling on them so to do, within the times limited by such Rules, or liable to Attachment, 252.
 11. Claim of the Bishop of Ely to the execution of writs within the Franchise of Ely, 260.
 12. That Sheriffs may be called upon by Rule of Court to bring into Court the bodies of Defendants, though out of office, 314.
 13. That Sheriffs return writs upon the day the Rule calling upon them so to do shall expire, or liable to Attachment, 317.
 14. *The occasion of making the last Rule, ibid.*
 15. *By Statute, no Sheriff is liable to be called upon to return any Writ, &c. unless required so to do within six months after the expiration of his office, ibid.*
 16. *The construction of the Statute, and what shall be deemed good service of a Rule to return a writ or bring in the body, 317, 318, 319.*
- See JURY, 1, 2. SPECIAL BAIL, 18. 25. ATTACHMENT of CONTEMPT, 1, 2. 4.

SUMMONS, JUDGE's.

See PRACTICE, 5.

SUPER-

I N D E X.

SUPERSEDEAS.

See PRISONER, 3, 4, 12, 19, 20, 30.

T.

TRIAL, *entering Issues for Trial.*

1. That no Attorney of this Court pay a greater sum for entering his Record for Trial at the Affizes than Attornies of the Common Pleas, 8.
2. That in all causes to be tried at any Affizes, the writ and record be entered together, and that no record be returned without the writ, 258.
3. That no Writ or Record of *Nisi Prius* be received at the Affizes, unless they be delivered to and entered with the Marshal before the first sitting of the Court after the Commission-day, except in the counties of *York* and *Norfolk*, and there before the first sitting of the Court, on the second day after the Commission-day; and that all causes be tried in the order they be entered, unless the Judge otherwise order, 262.
4. That a list of all the causes entered for Trial be made by the Marshal, and fixed up in some public place in the *Nisi Prius* Court, and there remain during the Affizes, 264.
5. That no Record or Writ of *Nisi Prius* be received at any sitting after Term in *Middlesex*, unless the same be delivered to and entered with the Marshal two days after the last day of every Term; nor in *London*, unless before the day to which the sitting shall be first adjourned; and that every cause be tried in the order it be entered, beginning with

E c

the

I N D E X.

the *Remanets*, unless the Judge otherwise order, 268.

6. That no Writ or Record of *Nisi Prius* be received at the Assizes for the county of *Norfolk* or city of *Norwich*, unless the same be delivered to and entered with the Marshal, before the first sitting of the Court, on the day next after the Commission-day, 320.

7. When causes shall be entered for Trial at the sittings after Term in *London* and *Middlesex*. See ADDENDA.

See ISSUE, 2. JURY, 3, 4, 5. WRITS, 5, 13. NE RECIPIATUR, 1, 2. ARGUMENT, 3, 5, 6.

TRIAL at BAR.

See JURY, 3, 4. WRITS, 13.

NOTICE of TRIAL, of INQUIRY, and Countermand of such Notices.

1. Due Notice of Trial to be given in all causes to be tried at the Assizes, and in such as be brought to Trial by Proviso, as well in *London* and *Middlesex* as at the Assizes, 29.
2. The several Notices of Trial, of Inquiry, and Countermand thereof necessary to be given, 30, 31, 32, 33.
3. If a Plaintiff give Notice of Trial, and do not proceed accordingly, he must give fresh Notice, in order to carry his cause to Trial, 74.
4. And shall pay costs occasioned by such Notice, unless he countermand in due time, 75.
5. The practice in obtaining costs for not proceeding to Trial according to Notice, *ibid*.
6. After issue joined, and Notice of Trial given, if the Defendant demur, and the Plaintiff obtain

I N D E X.

- judgment on Demurrer, the Defendant shall accept Notice of Inquiry from the time Notice of Trial was given, 213.
7. *The practice that has arisen upon the above Rule, 214.*
 8. *The Court will give the Defendant costs against a Plaintiff for not proceeding to execute his Inquiry in pursuance of Notice, unless he countermand in due time, ibid.*
 9. *If Notice of Trial be given upon a Paper Book, which the Defendant return with the pleadings struck out, and plead the General Issue, the Plaintiff, on delivering his Issue, may give Notice of Trial for the same sitting or Assizes, though the time be elapsed for giving full Notice, 214.*
 10. *When short Notice of Trial is to be accepted in country causes, such Notice shall be given at the least four days before the Commission-day, 305.*

V.

V E N U E.

1. *The privilege of Attornies, when Plaintiffs, in laying the Venue in Middlesex, 42.*
2. *That actions be laid in their proper counties, 48.*
3. *That the Venue be changed on motion, 49.*
4. *In what cases the Court will and will not change the Venue, and how application must be made for that purpose, and to discharge the Rule, 49 to 53.*
5. *Where the Venue shall be laid in actions removed by Habeas Corpus from the Courts of Canterbury, Southampton, Litchfield, and Poole, 61.*
6. *If a Defendant be sued by special Capias, and the Venue of the Declaration be different to that of the*

I N D E X.

writ, the Bail are discharged, aliter if the Suit be by Testatum Capias, 226.

See AMENDMENT, 2.

VERDICT, SPECIAL.

How Special Verdicts shall be drawn and signed by counsel, 76, 77.

U.

UNDERTAKINGS.

See ATTACHMENT of CONTEMPT, 1, 2. 4.

W.

WARRANTS of ATTORNEY.

1. Warrants of Attorney to be entered upon the Rolls, 140.
2. Warrants of Attorney to be duly filed, and the Defendant's Attorney to pay for filing his Warrant when he receives a copy of the Plaintiff's Declaration, and pay for filing it, 203.
3. *But Judgment cannot be signed, if the Defendant's Attorney refuse to pay for filing his Warrant of Attorney, 285.*
4. *The Court will permit the amendment of Warrants of Attorney as to any clerical error, 204.*

WARRANT of ATTORNEY for entering Judgment.

1. Warrants of Attorney for entering Judgment executed by prisoners to be attested by an Attorney for the Defendant, 99. 243.

2. *The*

I N D E X

2. *The several cases determined upon the construction of the Rules, requiring the presence of an Attorney on behalf of a prisoner executing a Warrant of Attorney, 100, 101, 102.*
3. *If a prisoner in Ireland give his Warrant of Attorney to enter Judgment in the Courts here, he must have an Attorney on his behalf to attest the execution of it, 244.*

See BAIL, COMMON, 3.

W R I T S.

1. *That no Certiorari upon a Writ of Error be sued out after a Certiorari before sued out and returned without motion, 17.*
2. *That Attornies suing out Writs of Exigent be careful that Writs of Proclamation be delivered, and that Sheriffs duly execute such writs, 50.*
3. *Judicial Writs to be executed in Wales, 12.*
4. *So also may Mesne Procefs, 13.*
5. *When a Venire Facias de novo shall issue, 77.*
6. *That upon suing forth every Alias, Pluries, and non Omittas Capias, the Term wherein the Latitat issued be subscribed thereon, 80.*
7. *That the Prothonotaries after every Term see that the writs delivered to Sheriffs for execution have been duly sued forth, and that Sheriffs attend the Prothonotaries summons, 81.*
8. *Writs not to be sealed before they be signed, 82.*
9. *That no Clerk of the Office permit any one to set his name to any Prothonotaries Writ, 85.*
10. *That no Ca. Sa., Fi. Fa., Testatum, or Alias, be sealed before they be signed with the Latitat sign, 89.*

11. That

I N D E X.

11. That no such writ be signed, unless brought by the Clerk, whose name is thereto, or his known Clerk, 89.
12. That the Keeper of the Seal allow to every Clerk of the Chief Clerk and his Clerk the sealing of one writ *gratis* every Term. See ADDENDA.
13. That no Writ of *Alias* or *Pluries Distingas Juratorum*, with a *Tales* for the trial of an Issue at Bar, issue before the Precedent Writ, with a Pannel annexed, be delivered to the Secondary, 97.
14. That all signable writs be signed before they be sealed, 98.
15. That the several Undersheriffs permit the Officers appointed to keep the Seal to inspect all writs delivered to them, 148.
16. That one or more persons be permitted to attend the sealing of writs on behalf of the Crown, 125.
17. The like permission on behalf of the Earl of Suffolk, 131.
18. That no *Alias Scire Facias* issue until the first be returnable, 163.
19. The day and year of suing forth *Mesne Process* to arrest any Defendant to be set down thereon, and the Attorney's name, and also to Writs of Execution, and to Sheriff's Warrants granted thereon; but the not subscribing the Attorney's name to Sheriff's Warrants not to vitiate the writ, but the Sheriff is subject to a penalty, 218.
20. Wherein a plurality of Defendants may and may not be included in one writ, 270.
21. That no writ be sealed, unless regularly made out and filled up, 271.

22. That

I N D E X.

22. That the *Custos Brevium* indorse the writs returned to him, with the day and hour of filing them, 309.
 23. That Sheriffs return writs upon the day the Rule calling upon them so to do expire, or an Attachment issue upon the morrow, 317.
 24. *The occasion of making this Rule*, ibid.
 25. *Only four Defendants to be put in one writ*, 270.
- See AC ETIAM, 1, 2. ADDITION, 1, 2. ATTACHMENT of PRIVILEGE, 1, 2. ORIGINAL WRITS.

THE END.

E. G. M. B.

I N D E X

21. That the Office of the Secretary of the State is
located at Albany, with the day and hour of filing
them, 300

22. That the Secretary of the State is to be
called upon them to do either, or an Attach-
ment like upon the motion, 317

23. The manner of making the same, 318

24. Only one Affidavit is to be made in any case, 319

25. That the same is to be made in the name of the
Attorney, 320

26. That the same is to be made in the name of the
Attorney, 321

27. That the same is to be made in the name of the
Attorney, 322

28. That the same is to be made in the name of the
Attorney, 323

29. That the same is to be made in the name of the
Attorney, 324

30. That the same is to be made in the name of the
Attorney, 325

31. That the same is to be made in the name of the
Attorney, 326

32. That the same is to be made in the name of the
Attorney, 327

33. That the same is to be made in the name of the
Attorney, 328

34. That the same is to be made in the name of the
Attorney, 329

35. That the same is to be made in the name of the
Attorney, 330

36. That the same is to be made in the name of the
Attorney, 331

37. That the same is to be made in the name of the
Attorney, 332

38. That the same is to be made in the name of the
Attorney, 333

39. That the same is to be made in the name of the
Attorney, 334

40. That the same is to be made in the name of the
Attorney, 335

41. That the same is to be made in the name of the
Attorney, 336

42. That the same is to be made in the name of the
Attorney, 337

43. That the same is to be made in the name of the
Attorney, 338

44. That the same is to be made in the name of the
Attorney, 339

45. That the same is to be made in the name of the
Attorney, 340

46. That the same is to be made in the name of the
Attorney, 341

47. That the same is to be made in the name of the
Attorney, 342

48. That the same is to be made in the name of the
Attorney, 343

49. That the same is to be made in the name of the
Attorney, 344

50. That the same is to be made in the name of the
Attorney, 345

T H E E N D